

HB

B



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

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465-3765

HOUSE RULES COMMITTEE MEETING
FRIDAY, MAY 7, 1987
8:00 a.m. - Capitol, Room 208

AGENDA:

CSHB 3 (Judiciary) - "An Act relating to the private sale and
consignment of art."
(Representative Gruenberg)

I N D E X

- I. Memo/May 7, 1987 to House Rules Cmte. from Rep. Gruenberg
- II. Proposed version CSHB 3 (RULES) - *with changes marked
- III. CSHB 3 (Judiciary)
- IV. Letter/April 17, 1987 to Rep. Gruenberg, re: CSHB 3 (Jud)
- V. Fiscal Note HB 3 published 2/13/87

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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ANCHORAGE, ALASKA 99503
(907) 276-6844

MEMORANDUM

DATE: May 7, 1987

TO: Members of the House Rules Committee

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

RE: CSHB 3 (Judiciary), "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. 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 is based on HB 517 which passed the House last session, but died in the Senate Rules Committee.

The need for the proposed amendment was brought to our attention by the Alaska Museum Association. The present language requires that the purchaser of a work of art get a written agreement from the artist to display the artwork publicly. The proposed amendment will eliminate this requirement, allowing the owner to display the artwork or permit a museum to do so, without asking the artist.

5-0117L ✓
Ford
5/7/87

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

yellow = add
green = delete

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IN THE HOUSE

BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 3 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the private sale and consignment
of works of art."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.02.326(e) is repealed and reenacted to read:

(e) When an artist delivers a work of art to an art dealer as described in AS 45.67.010, the art dealer shall prominently display a sign stating substantially, "Works of art for sale are on consignment." Works of art on consignment are not subject to the claims of the art dealer's creditors.

* Sec. 2. AS 45 is amended by adding a new chapter to read:

CHAPTER 67. ARTISTS AND WORKS OF ART.

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

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

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

(3) proceeds from the sale of the work of art are trust funds in the hands of the art dealer for the benefit of the artist;
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 The trusteeship continues until the fiduciary obligation of the art
8 dealer 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 if the waiver is clear, conspicuous, and
13 agreed to in writing by the artist. A waiver under this subsection is
14 not valid with respect to the proceeds of a work of art initially
15 received as a consignment but subsequently purchased by the art dealer
16 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, The provisions of AS 45.67.010,
24 45.67.020, and 45.67.030 may not be construed to have an effect upon a
25 written or oral contract or arrangement in existence on the effective
26 date of this section, except by the mutual written consent of the
27 parties.

28 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a
29 work of art is sold or otherwise transferred by or on behalf of the

1 artist who created it, or the heirs or personal representatives of the
2 artist, the right of reproduction is reserved to the grantor until it
3 passes into the public domain by act or operation of law, unless the
4 right is sooner expressly transferred by an instrument, note, or
5 memorandum in writing signed by the owner of the right or an author-
6 ized agent of the owner.

7 (b) When an exclusive or nonexclusive conveyance of a right of
8 reproduction or right to public display is made by the holder of the
9 right, ^{add: ^} or the holder's authorized agent, ownership of the physical art
10 work is presumed to remain with and be reserved to the grantor unless
11 expressly transferred in writing signed by the grantor or the
12 grantor's authorized agent.

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

15 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-
16 text otherwise requires,

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

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

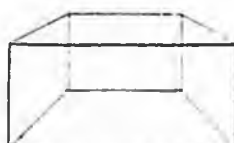
22 (3) "consignment" means that no title to or estate in the
23 goods or right to possession superior to that of the consignor vests
24 in the consignee, notwithstanding the consignee's power or authority
25 to transfer and convey, to third person, all of the right, title and
26 interest of the consignor,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

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

28 (5) "right of reproduction" means a right to reproduce,
29 prepare derivative works of, ^{delete: v [or public display]} or distribute copies of a work of art;

add: ^

1 (6) "work of art" means a painting, sculpture, drawing,
2 work of graphic art, photograph, or craft work, in any medium.
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April 17, 1987

Representative Max F. Gruenberg, Jr.
Post Office Box V
Juneau, Alaska 99811

Dear Representative Gruenberg:

I am writing to comment on CS for HB 3. While I am generally in support of this legislation, the definitions of "right of reproduction" (p 3, line 28+) concern me. By including "publicly display" and not qualifying it, you may be unnecessarily restricting museums from exhibiting works they purchase.

After speaking with Mark Handley, I understand that the intent is to manage film or video images of the work. This needs to be clarified. There are unwritten expectations that museums will, at some time, exhibit what they own. Requiring permission from the owner or artist to do this would restrict museums from carrying on business as usual.

I urge you to specify what the intent in "publicly display" is so that we can feel confident that museums, whose purposes are education and public service, are not adversely affected by this bill. Then we can support it.

Sincerely,

Roxana Adams

Roxana Adams, President
Museums Alaska

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 3
Publish Date: HOUSE 2/13/87

Revision Date: _____

Agency Affected: Department of Law

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

BRU: Legal Services

Sponsor: Repr. Gruenberg

Components: Operations

Requestor: House Labor and Commerce

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- |

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|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

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|---------|--|--|--|--|--|--|
| 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

Phone: 465-3672

Division: Administrative Services
Ronald W. Lorensen

Date: 1/21/87

Approved by Commissioner: Acting Attorney General

Date: 1/21/87

Agency: Department of Law

- 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. HB 3

2/13/87

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.