

HOUSE BILL NO. 602

INTRODUCED BY FRITZ, SCHYE, ECK,
LORY, BLAYLOCK, B. BROWN

IN THE HOUSE

January 31, 1985	Introduced and referred to Committee on Business and Labor.
February 8, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 9, 1985	Second reading, do pass as amended.
February 11, 1985	Correctly engrossed.
February 12, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 13, 1985	Introduced and referred to Committee on Business and Industry.
March 19, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1985	Second reading, concurred in.
March 25, 1985	Third reading, concurred in. Ayes, 49; Noes, 0.
	Returned to House with amendments.

IN THE HOUSE

March 26, 1985

Received from Senate.

April 8, 1985

Second reading, pass
consideration.

April 9, 1985

Second reading, amendments
concurred in.

On motion, rules suspended and
bill placed on third reading
this day.

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 602

INTRODUCED BY

Blaylock *B.B. Brown* *Ed. Long*
 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE
 RELATIONSHIP BETWEEN AN ARTIST AND AN ART DEALER; PROVIDING
 THAT A CONSIGNMENT RELATIONSHIP IS CREATED; PROVIDING THAT
 THE DEALER IS A TRUSTEE AND HOLDS THE ARTIST'S WORKS AND
 FUNDS IN TRUST; PROVIDING FOR NOTICE OF SALES TO THE
 ARTIST."

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

Section 1. Definitions. As used in [this act], unless
 the context requires otherwise, the following definitions
 apply:

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

(2) "Artist" means a person who creates a work of fine
 art or, if the person is deceased, the person's heir,
 devisee, or personal representative.

(3) "Consignment" means that no title to, estate in,
 or right to possession of fine art superior to that of the
 consignor vests in the consignee, notwithstanding the
 consignee's power or authority to transfer and convey to a

third person all of the right, title, and interest of the
 consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing,
 work of graphic art (including an etching, lithograph,
 offset print, textiles, silk screen, or a work of graphic
 art of like nature), a work of calligraphy, or a work in
 mixed media (including a collage, assemblage, or any
 combination of the art media mentioned in this subsection).

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

Section 2. Artist-art dealer relationship.
 Notwithstanding any custom, practice, or usage of the trade
 to the contrary, whenever an artist delivers or causes to be
 delivered a work of fine art of the artist's own creation to
 an art dealer in this state for the purpose of exhibition or
 sale, or both, on a commission, fee, or other basis of
 compensation, the delivery to and acceptance of such work of
 fine art by the dealer constitutes a consignment, unless the
 delivery to the art dealer is pursuant to an outright sale
 for which the artist receives upon delivery or has received
 prior to delivery full compensation for the work of fine
 art.

Section 3. Agency relationship -- trust property. A
 consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine

1 art, is an agent of the artist for the purpose of sale or
2 exhibition of the consigned work of fine art within the
3 state of Montana.

4 (2) The work of fine art constitutes property held in
5 trust by the consignee for the benefit of the consignor and
6 is not subject to claim by a creditor of the consignee.

7 (3) The consignee is responsible for the loss of or
8 damage to the work of fine art.

9 (4) The proceeds from the sale of the work of fine art
10 constitute funds held in trust by the consignee for the
11 benefit of the consignor. The proceeds must first be applied
12 to pay any balance due to the consignor, unless the
13 consignor expressly agrees otherwise in writing.

14 Section 4. Subsequent sale -- payment to consignor. A
15 work of fine art received as a consignment remains trust
16 property, notwithstanding the subsequent purchase thereof by
17 the consignee directly or indirectly for the consignee's own
18 account, until the price is paid in full to the consignor.
19 If the work is resold to a bona fide purchaser before the
20 consignor has been paid in full, the proceeds of the resale
21 received by the consignee constitute funds held in trust for
22 the benefit of the consignor to the extent necessary to pay
23 any balance due to the consignor and the trusteeship
24 continues until the fiduciary obligation of the consignee
25 with respect to the transaction is discharged in full.

1 Section 5. Waiver void -- exemption from UCC. (1) Any
2 provision of a contract or agreement by which the consignor
3 waives any provision of [this act] is void.

4 (2) [This act] is not subject to the provisions of
5 Title 30, chapters 1 through 9.

6 Section 6. Tracking provisions. An art dealer selling
7 a work of fine art must provide the artist with the name and
8 address of the purchaser of the work of fine art within 30
9 days after the sale.

10 Section 7. Saving clause. This act does not apply to a
11 written contract executed prior to October 1, 1985, unless:

12 (1) the parties agree that this act will apply; or
13 (2) the contract is extended or renewed after the
14 effective date of this act.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 602

INTRODUCED BY FRITZ, SCHYE, ECK,

LORY, BLAYLOCK, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE
RELATIONSHIP BETWEEN AN ARTIST AND AN ART DEALER; PROVIDING
THAT A CONSIGNMENT RELATIONSHIP IS CREATED; PROVIDING THAT
THE DEALER IS A TRUSTEE AND HOLDS THE ARTIST'S WORKS AND
FUNDS IN TRUST; PROVIDING FOR NOTICE OF SALES TO THE
ARTIST."

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

Section 1. Definitions. As used in [this act], unless
the context requires otherwise, the following definitions
apply:

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

(2) "Artist" means a person who creates a work of fine
art or, if the person is deceased, the person's heir,
devisee, or personal representative.

(3) "Consignment" means that no title to, estate in,
or right to possession of fine art superior to that of the
consignor vests in the consignee, notwithstanding the

consignee's power or authority to transfer and convey to a
third person all of the right, title, and interest of the
consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing,
work of graphic art (including an etching, lithograph,
SIGNED LIMITED EDITION offset print, ~~textiles~~, silk screen,
or a work of graphic art of like nature), a work of
calligraphy, PHOTOGRAPHS, ORIGINAL WORKS IN CERAMICS, WOOD,
METALS, GLASS, PLASTIC, WAX, STONE, OR LEATHER, or a work in
mixed media (including a collage, assemblage, or any
combination of the art media mentioned in this subsection).

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

Section 2. Artist-art dealer relationship.
Notwithstanding any custom, practice, or usage of the trade
to the contrary, whenever an artist delivers or causes to be
delivered a work of fine art of the artist's own creation to
an art dealer in this state for the purpose of exhibition or
sale, or both, on a commission, fee, or other basis of
compensation, the delivery to and acceptance of such work of
fine art by the dealer constitutes a consignment, unless the
delivery to the art dealer is pursuant to an outright sale
for which the artist receives upon delivery or has received
prior to delivery full compensation for the work of fine
art.

Section 3. Agency relationship -- trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. THIS RELATIONSHIP MUST BE DEFINED IN WRITING AND RENEWED AT LEAST EVERY 3 YEARS BY THE ART DEALER AND THE ARTIST. IT IS THE RESPONSIBILITY OF THE ARTIST TO IDENTIFY CLEARLY THE WORK OF ART BY SECURELY ATTACHING IDENTIFYING MARKING TO OR CLEARLY SIGNING THE WORK OF ART.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art WHILE IN THE POSSESSION OF OR ON THE PREMISES OF THE CONSIGNEE.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

Section 4. Subsequent sale -- payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own

account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

Section 5. Waiver void -- exemption from UCC. (1) Any provision of a contract or agreement by which the consignor waives any provision of [this act] is void.

(2) [This act] is not subject to the provisions of Title 30, chapters 1 through 9.

Section 6. Tracking provisions. An art dealer selling a work of fine art must provide, UPON REQUEST FROM THE ARTIST IN WRITING UPON CONSIGNMENT OF THE WORK, the artist with the name and address of the purchaser of the work of fine art WITH PURCHASE PRICE OF \$200 OR MORE within 30 days after the sale.

Section 7. Saving clause. This act does not apply to a written contract executed prior to October 1, 1985, unless:

(1) the parties agree that this act will apply; or
(2) the contract is extended or renewed after the effective date of this act.

-End-

HOUSE BILL NO. 602

INTRODUCED BY FRITZ, SCHYE, ECK,

LORY, BLAYLOCK, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIP BETWEEN AN ARTIST AND AN ART DEALER; PROVIDING THAT A CONSIGNMENT RELATIONSHIP IS CREATED; PROVIDING THAT THE DEALER IS A TRUSTEE AND HOLDS THE ARTIST'S WORKS AND FUNDS IN TRUST; PROVIDING FOR NOTICE OF SALES TO THE ARTIST."

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

Section 1. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

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

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the

consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, SIGNED LIMITED EDITION offset print, textiles, silk screen, or a work of graphic art of like nature), a work of calligraphy, PHOTOGRAPHS, ORIGINAL WORKS IN CERAMICS, WOOD, METALS, GLASS, PLASTIC, WAX, STONE, OR LEATHER, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

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

Section 2. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

Section 3. Agency relationship -- trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. THIS RELATIONSHIP MUST BE DEFINED IN WRITING AND RENEWED AT LEAST EVERY 3 YEARS BY THE ART DEALER AND THE ARTIST. IT IS THE RESPONSIBILITY OF THE ARTIST TO IDENTIFY CLEARLY THE WORK OF ART BY SECURELY ATTACHING IDENTIFYING MARKING TO OR CLEARLY SIGNING THE WORK OF ART.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art WHILE IN THE POSSESSION OF OR ON THE PREMISES OF THE CONSIGNEE.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

Section 4. Subsequent sale -- payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own

account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

Section 5. Waiver void -- exemption from UCC. (1) Any provision of a contract or agreement by which the consignor waives any provision of [this act] is void.

(2) [This act] is not subject to the provisions of Title 30, chapters 1 through 9.

~~Section 6. Tracking provisions. An art dealer selling a work of fine art must provide, upon request from the artist in writing upon consignment of the work, the name and address of the purchaser of the work of fine art with purchase price of \$200 or more within 30 days after the sale.~~

Section 6. Saving clause. This act does not apply to a written contract executed prior to October 1, 1985, unless:

(1) the parties agree that this act will apply; or
(2) the contract is extended or renewed after the effective date of this act.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 19 19 85

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

having had under consideration..... HOUSE BILL No. 602

third reading copy (blue)
color

ARTIST-ART DEALER RELATIONSHIP

Respectfully report as follows: That..... HOUSE BILL No. 602

be amended as follows:

1. Page 2, line 18.
Following: "exhibition"
Strike: "or"
Insert: "and"

2. Page 2, line 19.
Following: "sale"
Strike: ", or both,"

AND AS AMENDED

BE CONCURRED IN

~~DO PASS~~

~~XXXXXXXXXX~~

Sen. Mike Halligan

Chairman.

HOUSE BILL NO. 602

INTRODUCED BY FRITZ, SCHYE, ECK,

LORY, BLAYLOCK, B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE RELATIONSHIP BETWEEN AN ARTIST AND AN ART DEALER; PROVIDING THAT A CONSIGNMENT RELATIONSHIP IS CREATED; PROVIDING THAT THE DEALER IS A TRUSTEE AND HOLDS THE ARTIST'S WORKS AND FUNDS IN TRUST; PROVIDING FOR NOTICE OF SALES TO THE ARTIST."

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

Section 1. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

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

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the

consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such fine art.

(4) "Fine art" means a painting, sculpture, drawing, work of graphic art (including an etching, lithograph, SIGNED LIMITED EDITION offset print, ~~textiles~~, silk screen, or a work of graphic art of like nature), a work of calligraphy, PHOTOGRAPHS, ORIGINAL WORKS IN CERAMICS, WOOD, METALS, GLASS, PLASTIC, WAX, STONE, OR LEATHER, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

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

Section 2. Artist-art dealer relationship. Notwithstanding any custom, practice, or usage of the trade to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition or AND sale, or both, on a commission, fee, or other basis of compensation, the delivery to and acceptance of such work of fine art by the dealer constitutes a consignment, unless the delivery to the art dealer is pursuant to an outright sale for which the artist receives upon delivery or has received prior to delivery full compensation for the work of fine art.

REFERENCE BILL

Section 3. Agency relationship -- trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. THIS RELATIONSHIP MUST BE DEFINED IN WRITING AND RENEWED AT LEAST EVERY 3 YEARS BY THE ART DEALER AND THE ARTIST. IT IS THE RESPONSIBILITY OF THE ARTIST TO IDENTIFY CLEARLY THE WORK OF ART BY SECURELY ATTACHING IDENTIFYING MARKING TO OR CLEARLY SIGNING THE WORK OF ART.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art WHILE IN THE POSSESSION OF OR ON THE PREMISES OF THE CONSIGNEE.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied to pay any balance due to the consignor, unless the consignor expressly agrees otherwise in writing.

Section 4. Subsequent sale -- payment to consignor. A work of fine art received as a consignment remains trust property, notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for the consignee's own

account, until the price is paid in full to the consignor. If the work is resold to a bona fide purchaser before the consignor has been paid in full, the proceeds of the resale received by the consignee constitute funds held in trust for the benefit of the consignor to the extent necessary to pay any balance due to the consignor and the trusteeship continues until the fiduciary obligation of the consignee with respect to the transaction is discharged in full.

Section 5. Waiver void -- exemption from UCC. (1) Any provision of a contract or agreement by which the consignor waives any provision of [this act] is void.

(2) [This act] is not subject to the provisions of Title 30, chapters 1 through 9.

~~Section 6. Tracking provisions. An art dealer selling a work of fine art must provide, upon request from the artist in writing upon consignment of the work, the name and address of the purchaser of the work of fine art with purchase price of \$200 or more within 30 days after the sale.~~

Section 6. Saving clause. This act does not apply to a written contract executed prior to October 1, 1985, unless:

(1) the parties agree that this act will apply; or

(2) the contract is extended or renewed after the effective date of this act.

-End-