

4988--A

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sens. LITTLE, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- recommitted to the Committee on Cultural Affairs, Tourism, Parks and Recreation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the arts and cultural affairs law, in relation to consignments of works of art to art merchants by artists and their successors in interest

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 20 and 21 of section 11.01 of the arts and
2 cultural affairs law, subdivision 21 as renumbered by chapter 940 of the
3 laws of 1990, are renumbered subdivisions 21 and 22 and a new subdivi-
4 sion 20 is added to read as follows:
5 20. "SUCCESSOR IN INTEREST" SHALL MEAN A "PERSONAL REPRESENTATIVE",
6 "TESTAMENTARY BENEFICIARY", TRUSTEE OR BENEFICIARY OF A "LIFETIME TRUST"
7 OR AN "HEIR" (INCLUDING HEIRS WHO ACQUIRE THE WORK OF FINE ART, CRAFT OR
8 PRINT FROM THE ARTIST OR CRAFTSPERSON OR FROM ANOTHER HEIR OR BENEFICI-
9 ARY OF THE ARTIST OR CRAFTSPERSON), WHICH TERMS SHALL HAVE THE SAME
10 MEANINGS AS SET FORTH IN THE ESTATES, POWERS AND TRUSTS LAW.
11 S 2. Section 12.01 of the arts and cultural affairs law, as added by
12 chapter 849 of the laws of 1984 and paragraph (c) of subdivision 1 as
13 added by chapter 675 of the laws of 1995, is amended to read as follows:
14 S 12.01. Artist-art merchant relationships. 1. Notwithstanding any
15 custom, practice or usage of the trade, any provision of the uniform
16 commercial code or any other law, statute, requirement or rule, or any
17 agreement, note, memorandum or writing to the contrary:
18 (a) Whenever an artist or craftsperson, [his heirs or personal repre-
19 sentatives] OR A SUCCESSOR IN INTEREST OF SUCH ARTIST OR CRAFTSPERSON,
20 delivers or causes to be delivered a work of fine art, craft or a print

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD09750-02-2

1 of [his] SUCH ARTIST'S OR CRAFTSPERSON'S own creation to an art merchant
2 for the purpose of exhibition and/or sale on a commission, fee or other
3 basis of compensation, the delivery to and acceptance thereof by the art
4 merchant establishes a consignor/consignee relationship as between such
5 artist or craftsman, OR THE SUCCESSOR IN INTEREST OF SUCH ARTIST OR
6 CRAFTSPERSON, and such art merchant with respect to the said work, and:

7 (i) such consignee shall thereafter be deemed to be the agent of such
8 consignor with respect to the said work;

9 (ii) such work is trust property in the hands of the consignee for the
10 benefit of the consignor;

11 (iii) any proceeds from the sale of such work are trust funds in the
12 hands of the consignee for the benefit of the consignor;

13 (iv) such work shall remain trust property notwithstanding its
14 purchase by the consignee for his own account until the price is paid in
15 full to the consignor; provided that, if such work is resold to a bona
16 fide third party before the consignor has been paid in full, the resale
17 proceeds are trust funds in the hands of the consignee for the benefit
18 of the consignor to the extent necessary to pay any balance still due to
19 the consignor and such trusteeship shall continue until the fiduciary
20 obligation of the consignee with respect to such transaction is
21 discharged in full; and

22 (v) SUCH TRUST PROPERTY AND TRUST FUNDS SHALL BE CONSIDERED PROPERTY
23 HELD IN STATUTORY TRUST AS DEFINED AND CONTEMPLATED BY 11 U.S.C. SECTION
24 541 AND OTHER RELEVANT BANKRUPTCY LAW, AND no such trust property or
25 trust funds shall BECOME THE PROPERTY OF THE CONSIGNEE OR be subject or
26 subordinate to any claims, liens or security interest of any kind or
27 nature whatsoever OF THE CONSIGNEE'S CREDITORS.

28 (b) Waiver of any provision of this section is absolutely void except
29 that a consignor may lawfully waive the provisions of clause (iii) of
30 paragraph (a) of this subdivision, if such waiver is clear, conspicuous,
31 in writing, IN WORDS WHICH CLEARLY AND SPECIFICALLY APPRISE THE CONSIG-
32 NOR THAT THE CONSIGNOR IS WAIVING RIGHTS UNDER THIS SECTION WITH RESPECT
33 TO PROCEEDS FROM THE SALE OF THE CONSIGNOR'S WORK, and subscribed by the
34 consignor, provided:

35 (i) no such waiver shall be valid with respect to the first two thou-
36 sand five hundred dollars of gross proceeds of sales received in any
37 twelve-month period commencing with the date of the execution of such
38 waiver;

39 (ii) no such waiver shall be valid with respect to the proceeds of a
40 work initially received on consignment but subsequently purchased by the
41 consignee directly or indirectly for his own account; and

42 (iii) no such waiver shall inure to the benefit of the consignee's
43 creditors in any manner which might be inconsistent with the consignor's
44 rights under this subdivision.

45 (c) [proceeds] PROCEEDS from the sale of consigned works covered by
46 this section shall be deemed to be revenue from the sale of tangible
47 goods and not revenue from the provision of services to the consignor or
48 others, except that the provisions of this paragraph shall not apply to
49 proceeds from the sale of consigned works sold at public auction.

50 2. IF A CONSIGNEE FAILS TO TREAT THE TRUST PROPERTY OR TRUST FUNDS
51 IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IN
52 ACCORDANCE WITH THE REQUIREMENTS OF FIDUCIARIES IN SECTION 11-1.6 OF THE
53 ESTATES, POWERS AND TRUSTS LAW, SUCH FAILURE SHALL CONSTITUTE A
54 VIOLATION OF THIS ARTICLE AND OF SECTION 11-1.6 OF THE ESTATES, POWERS
55 AND TRUSTS LAW AND SHALL BE SUBJECT TO THE PENALTIES PROVIDED THEREIN.

1 3. ANY PERSON WHO HAS BEEN INJURED BY REASON OF A VIOLATION OF THIS
2 ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAW-
3 FUL ACT, TO RECOVER HIS OR HER ACTUAL DAMAGES, OR BOTH. THE COURT MAY
4 AWARD REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES TO A PREVAILING
5 PLAINTIFF IN ANY SUCH ACTION.

6 4. Nothing in this section shall be construed to have any effect upon
7 any written or oral contract or arrangement in existence prior to
8 September first, nineteen hundred sixty-nine or to any extensions or
9 renewals thereof except by the mutual written consent of the parties
10 thereto.

11 S 3. This act shall take effect on the sixtieth day after it shall
12 have become a law and shall apply to all contracts or arrangements
13 entered into, extended or renewed after such effective date.