

8604--B

2011-2012 Regular Sessions

I N A S S E M B L Y

September 21, 2011

Introduced by M. of A. ROSENTHAL, PAULIN, BRONSON, ZEBROWSKI, JAFFEE, MILLMAN, GALEF, WEPRIN, BARRON, MARKEY, GABRYSZAK, HOOPER -- Multi-Sponsored by -- M. of A. ABINANTI, CAHILL, COLTON, McENENY, REILLY, P. RIVERA, ROBINSON, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development -- recommitted to the Committee on Tourism, Parks, Arts and Sports Development in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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

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

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1 commercial code or any other law, statute, requirement or rule, or any  
2 agreement, note, memorandum or writing to the contrary:

3 (a) Whenever an artist or craftsman, [his heirs or personal repre-  
4 sentatives] OR A SUCCESSOR IN INTEREST OF SUCH ARTIST OR CRAFTSPERSON,  
5 delivers or causes to be delivered a work of fine art, craft or a print  
6 of [his] SUCH ARTIST'S OR CRAFTSPERSON'S own creation to an art merchant  
7 for the purpose of exhibition and/or sale on a commission, fee or other  
8 basis of compensation, the delivery to and acceptance thereof by the art  
9 merchant establishes a consignor/consignee relationship as between such  
10 artist or craftsman, OR THE SUCCESSOR IN INTEREST OF SUCH ARTIST OR  
11 CRAFTSPERSON, and such art merchant with respect to the said work, and:

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

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

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

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

27 (v) SUCH TRUST PROPERTY AND TRUST FUNDS SHALL BE CONSIDERED PROPERTY  
28 HELD IN STATUTORY TRUST, AND no such trust property or trust funds shall  
29 BECOME THE PROPERTY OF THE CONSIGNEE OR be subject or subordinate to any  
30 claims, liens or security interest of any kind or nature whatsoever OF  
31 THE CONSIGNEE'S CREDITORS.

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

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

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

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

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

54 2. IF A CONSIGNEE FAILS TO TREAT THE TRUST PROPERTY OR TRUST FUNDS  
55 IDENTIFIED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IN  
56 ACCORDANCE WITH THE REQUIREMENTS OF FIDUCIARIES IN SECTION 11-1.6 OF THE

1 ESTATES, POWERS AND TRUSTS LAW, SUCH FAILURE SHALL CONSTITUTE A  
2 VIOLATION OF THIS ARTICLE AND OF SECTION 11-1.6 OF THE ESTATES, POWERS  
3 AND TRUSTS LAW AND SHALL BE SUBJECT TO THE PENALTIES PROVIDED THEREIN.

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

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

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