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I N A S S E M B L Y

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Introduced by M. of A. BING, PAULIN, BRONSON, ZEBROWSKI, JAFFEE, MILLMAN, GALEF, WEPRIN, SCHROEDER, BARRON, MARKEY, GABRYSZAK -- Multi-Sponsored by -- M. of A. CAHILL, COLTON, McENENY, PHEFFER, REILLY, P. RIVERA, ROBINSON, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

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

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

1 Section 1. Section 11.01 of the arts and cultural affairs law, as
2 added by chapter 849 of the laws of 1984, subdivisions 11 and 20 as
3 amended, subdivision 18 as added and subdivisions 19 and 21 as renum-
4 bered by chapter 940 of the laws of 1990, is amended to read as follows:
5 S 11.01. Definitions. As used in this title:
6 1. "Artist" means the creator of a work of fine art or, in the case of
7 multiples, the person who conceived or created the image which is
8 contained in or which constitutes the master from which the individual
9 print was made.
10 2. "Art merchant" means a person who is in the business of dealing,
11 exclusively or non-exclusively, in works of fine art or multiples, or a
12 person who by his occupation holds himself OR HERSELF out as having
13 knowledge or skill peculiar to such works, or to whom such knowledge or
14 skill may be attributed by his OR HER employment of an agent or other
15 intermediary who by his OR HER occupation holds himself OR HERSELF out
16 as having such knowledge or skill. The term "art merchant" includes an
17 auctioneer who sells such works at public auction, and except in the
18 case of multiples, includes persons, not otherwise defined or treated as
19 art merchants herein, who are consignors or principals of auctioneers.
20 3. "Author" or "authorship" refers to the creator of a work of fine
21 art or multiple or to the period, culture, source or origin, as the case

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

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1 may be, with which the creation of such work is identified in the
2 description of the work.

3 4. "Creditors" means "creditor" as defined in subdivision twelve of
4 section 1-201 of the uniform [commerical] COMMERCIAL code.

5 5. "Counterfeit" means a work of fine art or multiple made, altered or
6 copied, with or without intent to deceive, in such manner that it
7 appears or is claimed to have an authorship which it does not in fact
8 possess.

9 6. "Certificate of authenticity" means a written statement by an art
10 merchant confirming, approving or attesting to the authorship of a work
11 of fine art or multiple, which is capable of being used to the advantage
12 or disadvantage of some person.

13 7. "Conservation" means acts taken to correct deterioration and alter-
14 ation and acts taken to prevent, stop or retard deterioration.

15 8. "Craft" means a functional or non-functional work individually
16 designed, and crafted by hand, in any medium including but not limited
17 to textile, tile, paper, clay, glass, fiber, wood, metal or plastic;
18 provided, however, that if produced in multiples, craft shall not
19 include works mass produced or produced in other than a limited edition.

20 9. "Fine art" means a painting, sculpture, drawing, or work of graphic
21 art, and print, but not multiples.

22 10. "HEIR" SHALL HAVE THE MEANING PROVIDED IN THE ESTATES, POWERS AND
23 TRUSTS LAW.

24 11. "Limited edition" means works of art produced from a master, all
25 of which are the same image and bear numbers or other markings to denote
26 the limited production thereof to a stated maximum number of multiples,
27 or are otherwise held out as limited to a maximum number of multiples.

28 [11.] 12. "Master" when used alone is used in lieu of and means the
29 same as such things as printing plate, stone, block, screen, photograph-
30 ic negative or other like material which contains an image used to
31 produce visual art objects in multiples, or in the case of sculptures, a
32 mold, model, cast, form or other prototype, other than from glass, which
33 additional multiples of sculpture are produced, fabricated or carved.

34 [12.] 13. "On consignment" means that no title to, estate in, or right
35 to possession of, the work of fine art or multiple that is superior to
36 that of the consignor vests in the consignee, notwithstanding the
37 consignee's power or authority to transfer or convey all the right,
38 title and interest of the consignor, in and to such work, to a third
39 person.

40 [13.] 14. "Person" means an individual, partnership, corporation,
41 association or other group, however organized.

42 15. "PERSONAL REPRESENTATIVE" SHALL HAVE THE MEANING PROVIDED IN THE
43 ESTATES, POWERS AND TRUSTS LAW.

44 [14.] 16. "Print" in addition to meaning a multiple produced by, but
45 not limited to, such processes as engraving, etching, woodcutting,
46 lithography and serigraphy, also means multiples produced or developed
47 from photographic negatives, or any combination thereof.

48 [15.] 17. "Proofs" means multiples which are the same as, and which
49 are produced from the same masters as, the multiples in a limited
50 edition, but which, whether so designated or not, are set aside from and
51 are in addition to the limited edition to which they relate.

52 [16.] 18. "Reproduction" means a copy, in any medium, of a work of
53 fine art, that is displayed or published under circumstances that,
54 reasonably construed, evinces an intent that it be taken as a represen-
55 tation of a work of fine art as created by the artist.

1 [17.] 19. "Reproduction right" means a right to reproduce, prepare
2 derivative works of, distribute copies of, publicly perform or publicly
3 display a work of fine art.

4 [18.] 20. "Sculpture" means a three-dimensional fine art object
5 produced, fabricated or carved in multiple from a mold, model, cast,
6 form or other prototype, other than from glass, sold, offered for sale
7 or consigned in, into or from this state for an amount in excess of
8 fifteen hundred dollars.

9 [19.] 21. "Signed" means autographed by the artist's own hand, and not
10 by mechanical means of reproduction, after the multiple was produced,
11 whether or not the master was signed or unsigned.

12 [20.] 22. "Visual art multiples" or "multiples" means prints, photo-
13 graphs, positive or negative, sculpture and similar art objects produced
14 in more than one copy and sold, offered for sale or consigned in, into
15 or from this state for an amount in excess of one hundred dollars exclu-
16 sive of any frame or in the case of sculpture, an amount in excess of
17 fifteen hundred dollars. Pages or sheets taken from books and magazines
18 and offered for sale or sold as visual art objects shall be included,
19 but books and magazines are excluded.

20 [21.] 23. "Written instrument" means a written or printed agreement,
21 bill of sale, invoice, certificate of authenticity, catalogue or any
22 other written or printed note or memorandum or label describing the work
23 of fine art or multiple which is to be sold, exchanged or consigned by
24 an art merchant.

25 S 2. Section 12.01 of the arts and cultural affairs law, as added by
26 chapter 849 of the laws of 1984 and paragraph (c) of subdivision 1 as
27 added by chapter 675 of the laws of 1995, is amended to read as follows:

28 S 12.01. Artist-art merchant relationships. 1. Notwithstanding any
29 custom, practice or usage of the trade, any provision of the uniform
30 commercial code or any other law, statute, requirement or rule, or any
31 agreement, note, memorandum or writing to the contrary:

32 (a) Whenever an artist or craftsperson, [his] OR THE heirs or personal
33 representatives OF SUCH ARTIST OR CRAFTSPERSON, delivers or causes to be
34 delivered a work of fine art, craft or a print of [his] SUCH ARTIST'S OR
35 CRAFTSPERSON'S own creation to an art merchant for the purpose of exhi-
36 bition and/or sale on a commission, fee or other basis of compensation,
37 the delivery to and acceptance thereof by the art merchant establishes a
38 consignor/consignee relationship as between such artist or craftsperson,
39 OR THE HEIRS OR PERSONAL REPRESENTATIVES OF SUCH ARTIST OR CRAFTSPERSON,
40 and such art merchant with respect to the said work, and:

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

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

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

47 (iv) such work shall remain trust property notwithstanding its
48 purchase by the consignee for his own account until the price is paid in
49 full to the consignor; provided that, if such work is resold to a bona
50 fide third party before the consignor has been paid in full, the resale
51 proceeds are trust funds in the hands of the consignee for the benefit
52 of the consignor to the extent necessary to pay any balance still due to
53 the consignor and such trusteeship shall continue until the fiduciary
54 obligation of the consignee with respect to such transaction is
55 discharged in full; and

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

(b) Waiver of any provision of this section is absolutely void [except that a consignor may lawfully waive the provisions of clause (iii) of paragraph (a) of this subdivision, if such waiver is clear, conspicuous, in writing and subscribed by the consignor, provided:

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

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

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

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

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

3. ANY PERSON WHO HAS BEEN INJURED BY REASON OF A VIOLATION OF THIS ARTICLE MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT, TO RECOVER HIS OR HER ACTUAL DAMAGES, OR BOTH. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES TO A PREVAILING PLAINTIFF IN ANY SUCH ACTION. UPON A CONSIGNOR'S ESTABLISHING IN ANY SUCH ACTION A PRIMA FACIE CASE THAT THE CONSIGNOR DELIVERED OR CAUSED TO BE DELIVERED SUCH WORK OF FINE ART, CRAFT OR PRINT TO A CONSIGNEE AS DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AND MADE A DEMAND FOR RETURN OF THE WORK OR SALE PROCEEDS, THE CONSIGNEE SHALL HAVE THE BURDEN OF PROVING ITS DEFENSES TO THE CONSIGNOR'S CLAIMED RIGHT TO RETURN OF SUCH WORK OR SALE PROCEEDS THEREFROM.

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

S 3. This act shall take effect on the thirtieth day after it shall have become a law.