

By Mr. Cahoon of Chatham, petition of Howard C. Cahoon, Jr., relative to works of fine art and providing for certain payments to artists. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT RELATING TO WORKS OF FINE ART AND PAYMENTS TO ARTISTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter
2 15B the following chapter: —

3 **CHAPTER 15C.**

4 *Section 1.* (a) The Legislature hereby finds and declares that
5 the physical alteration or destruction of fine art, which is an
6 expression of the artist's personality, is detrimental to the artist's
7 reputation, and artists therefore have an interest in protecting their
8 works of fine art against such alteration or destruction; and that
9 there is also a public interest in preserving the integrity of cultural
10 and artistic creations.

11 (b) Definitions

12 (b) As used in this section:

13 (1) "Artist" means the individual or individuals who create a
14 work of fine art.

15 (2) "Fine art" means an original painting, sculpture, or drawing
16 of recognized quality, but shall not include works prepared under
17 contract for commercial use by its purchaser.

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

20 (4) "Frame".means to prepare, or cause to be prepared, a work
21 of fine art for display in a manner customarily considered to be
22 appropriate for a work of fine art in the particular medium.

23 (5) "Restore" means to return, or cause to be returned, a deteri-
24 orated or damaged work of fine art as nearly as is feasible to its
25 original state or condition, in accordance with prevailing stand-
26 ards.

27 (6) "Conserve" means to preserve, or cause to be preserved, a
28 work of fine art by retarding or preventing deterioration or damage
29 through appropriate treatment in accordance with prevailing
30 standards in order to maintain the structural integrity to the fullest
31 extent possible in an unchanging state.

32 (c) Mutilation, alteration or destruction of a work

33 (c)(1) No person, except an artist who owns and possesses a
34 work of fine art which the artist has created, shall intentionally
35 commit, or authorize the intentional commission of, any physical
36 defacement, mutilation, alteration, or destruction of a work of fine
37 art.

38 (2) In addition to the prohibitions contained in paragraph (1),
39 no person who frames, conserves, or restores a work of fine art
40 shall commit, or authorize the commission of, any physical deface-
41 ment, mutilation, alteration, or destruction of a work of fine art by
42 any act constituting gross negligence. For purposes of this section,
43 the term "gross negligence" shall mean the exercise of so slight a
44 degree of care as to justify the belief that there was an indifference
45 to the particular work of fine art.

46 (d) Authorship

47 (d) The artist shall retain at all times the right to claim author-
48 ship, or, for just and valid reason, to disclaim authorship of his or
49 her work of fine art.

50 (e) Remedies

51 (e) To effectuate the rights created by this section, the artist may
52 commence an action to recover or obtain any of the following:

53 (1) Injunctive relief.

54 (2) Actual damages.

55 (3) Punitive damages. In the event that punitive damages are
56 awarded, the court shall, in its discretion, select an organization or
57 organizations engaged in charitable or educational activities in-
58 volving the fine arts in California to receive such damages.

59 *Section 2.* (a) Whenever a work of fine art is sold and the
60 seller resides in Massachusetts or the sale takes place in Massachu-

61 sets, the seller or his agent shall pay to the artist of such work of
62 fine art or to such artist's agent 5 percent of the amount of such
63 sale. The right of the artist to receive an amount equal to 5 percent
64 of the amount of such sale is not transferable and may be waived
65 only by a contract in writing providing for an amount in excess of 5
66 percent of the amount of such sale.

67 (1) When a work of art is sold at an auction or by a gallery,
68 dealer, broker, museum, or other person acting as the agent for the
69 seller the agent shall withhold 5 percent of the amount of the sale,
70 locate the artist and pay the artist.

71 (2) If the seller or agent is unable to locate and pay the artist
72 within 90 days, an amount equal to 5 percent of the amount of the
73 sale shall be transferred to the Massachusetts Arts Council.

74 (3) If a seller or his agent fails to pay an artist the amount equal
75 to 5 percent of the sale of a work of fine art by the artist or fails to
76 transfer such amount to the Arts Council, the artist may bring an
77 action for damages within three years after the date of sale or one
78 year after the discovery of the sale, whichever is longer.

79 (4) Moneys received by the council pursuant to this section shall
80 be deposited in an account in the Special Deposit Fund in the State
81 Treasury.

82 (5) The Arts Council shall attempt to locate any artist for whom
83 money is received pursuant to this section. If the council is unable
84 to locate the artist and the artist does not file a written claim for the
85 money received by the council within seven years of the date of sale
86 of the work of fine art, the right of the artist terminates and such
87 money shall be transferred to the operating fund of the council as
88 reimbursement to fund programs of the council.

89 (6) Any amounts of money held by any seller or agent for the
90 payment of artists pursuant to this section shall be exempt from
91 attachment or execution of judgment by the creditors of such seller
92 or agent.

93 (b) Subdivision (a) shall not apply to any of the following:

94 (1) To the initial sale of a work of fine art where legal title to
95 such work at the time of such initial sale is vested in the artist
96 thereof.

97 (2) To the resale of a work of fine art for a gross sales price of less
98 than one thousand dollars (\$1,000).

99 (3) To a resale after the death of such artist.

100 (4) To the resale of the work of fine art for a gross sales price less
101 than the purchase price paid by the seller.

102 (5) To a transfer of a work of fine art which is exchanged for one
103 or more works of fine art or for a combination of cash, other
104 property, and one or more works of fine art where the fair market
105 value of the property exchanged is less than one thousand dollars
106 (\$1,000).

107 (c) For purposes of this section, the following terms have the
108 following meanings:

109 (1) "Artist" means the person who creates a work of fine art.

110 (2) "Fine art" means an original painting, sculpture, or drawing.

111 (d) This section shall become operative on January 1, 1982, and
112 shall apply to works of fine art created before and after its opera-
113 tive date.

114 (e) If any provision of this section or the application thereof to
115 any person or circumstance is held invalid for any reason, such
116 invalidity shall not affect any other provisions or applications of this
117 section which can be effected, without the invalid provision or
118 application, and to this end the provisions of this section are
119 severable.