

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1160

H. P. 963

House of Representatives, March 23, 1977

On Motion of Ms. Clark of Freeport referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Davies of Orono

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Provide for Residual Rights of Artists upon the Sale of Works of Fine Art.

Be it enacted by the People of the State of Maine, as follows:

27 MRSA c. 16 is enacted to read:

CHAPTER 16

RESIDUAL RIGHTS IN WORKS OF FINE ART

§ 451. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

1. Artist. "Artist" means the person who creates a work of fine art. The term "artist" does not include corporations or partnerships employing artists to create works of art according to the corporation's or partnership's specifications.

2. Sales price. "Sales price" means the total amount, excluding taxes, received by the seller for a work of fine art, including the fair market value of any property received in exchange for the work of fine art.

3. Work of fine art. "Work of fine art" means an original painting, drawing or sculpture.

§ 452. Artist's residual right in his work of art

1. Right to payment. Whenever a work of fine art is either sold in this State or sold by a resident of this State, the seller shall pay to the artist an amount equal to 5% of the sales price.

2. Restrictions. The artist's right to payment created in subsection 1 shall be nontransferable. The artist shall not waive the right, except by written contract providing for payment to the artist of an amount greater than 5% of the sales price.

§ 453. Location of artist unknown

1. Deposit with commission. If the seller is unable to locate the artist within 90 days of the sale, he shall transfer an amount equal to 5% of the sales price to the Maine State Commission on the Arts and the Humanities. The commission shall deposit the amount in a bank account specially created to contain amounts received by the commission under this section and the commission shall make all reasonable efforts to locate and pay the artist. Upon location of the artist by the commission, the commission shall retain 15% of the amount due the artist for its own benefit as compensation for locating the artist.

2. Termination of right. If the commission is unable to locate the artist and the artist does not file a written claim with the commission for the amount within 7 years after the date of the sale, the right of the artist under this chapter shall terminate and the commission shall transfer the amount to the general operating fund of the State Treasury.

§ 454. Artist's right of action

If the seller fails to pay the artist an amount equal to 5% of the sales price and fails to transfer the amount to the commission, the artist may bring an action for damages any time within 3 years after the date of the sale or at any time within one year of the artist's discovery of the sale, whichever is longer. These damages shall include reasonable attorney's fees for the artist's attorney.

§ 455. Exemption from attachment by seller's creditors

Any amount held by the seller for payment to the artist pursuant to this chapter shall be exempt from attachment or execution of judgment by creditors of the seller.

§ 456. Sales not subject to this chapter

This chapter shall not apply to the following:

1. Price less than \$500. The sale of a work of fine art for which the sales price is less than \$500;
2. Death of artist. A sale after the death of the artist; and
3. Price less than seller's purchase price. The sale of a work of fine art for which the sales price is less than the purchase price paid by the seller.

§ 457. Scope

This chapter shall apply to works of fine art created before and after its effective date.

§ 458. Application

This chapter shall not apply to any corporation or partnership or employee of any corporation or partnership which creates a work of fine art.

STATEMENT OF FACT

The purpose of this bill is to provide an artist with a residual right in his work of art and a right to receive a commission on certain sales of the work.

Often a work of fine art appreciates in value with age. Typically, however, the artist is unable to share in this appreciation of value because he has sold the work of art soon after creation. The artist usually cannot afford to delay the sale of his work until it has appreciated in value; he must sell the work to live. This bill permits the artist who initially sells his work for a relatively low price to share in the appreciation in value of his work.

The bill provides the artist with a right to receive an amount equal to 5% of the sales price of his work of art whenever the work is sold in Maine or is sold by a Maine resident. The purpose of extending coverage to sales by a Maine resident is to prevent a Maine resident from avoiding this chapter simply by leaving the State to sell the work of art. The bill provides that the artist's remedy shall be in the form of a civil action against the seller if the seller fails to pay the amount required. The right is personal to the artist and applies only when the sales price of the work of art exceeds \$500 and only when the sales price exceeds the price paid by the seller.