

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 545

H. P. 493

House of Representatives, February 2, 1981

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Protect Works of Art.

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

27 MRSA § 303 is enacted to read:

§ 303. Preservation of works of art

1. **Legislative findings and declaration.** The Legislature finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation and artists therefore have an interest in protecting their works of fine art against such alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.

2. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Artist" means the individual or individuals who create a work of fine art.
- B. "Conserve" means to preserve, or cause to be preserved, a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state.
- C. "Fine art" means an original painting, sculpture or drawing of recognized

quality, but shall not include work prepared under contract for commercial use by its purchaser.

D. "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium.

E. "Person" means an individual, partnership, corporation, association or other group, however organized.

F. "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition in accordance with prevailing standards.

3. Mutilation, alteration or destruction of a work. No person, except an artist who owns and possesses a work of fine art which the artist has created, may intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration or destruction of a work of fine art. In addition, no person who frames, conserves, or restores a work of fine art may commit, or authorize the commission of, any physical defacement, mutilation, alteration or destruction of a work of fine art by any act constituting gross negligence. For purposes of this subsection, the term "gross negligence" means the exercise of so slight a degree of care as to justify the belief that there was an indifference to the particular work of fine art.

4. Authorship. The artist shall retain at all times the right to claim authorship, or, for just and valid reason, to disclaim authorship of his work of fine art.

5. Remedies. To effectuate the rights created by this section, the artist may commence an action to recover or obtain any of the following:

A. Injunctive relief;

B. Actual damages;

C. Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts of this State to receive such damages;

D. Reasonable attorneys' and expert witness fees; and

E. Any other relief which the court deems proper.

6. Determination of recognized quality. In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums and other persons involved with the creation or marketing of fine art.

7. Rights and duties. The rights and duties created under this section:

A. Shall, with respect to the artist, or if any artist is deceased, his heir, legatee, or personal representative, exist until the 50th anniversary of the death of the artist;

B. Shall exist in addition to any other rights and duties which may now or in the future be applicable; and

C. Except as provided in subsection 8; paragraph A, may not be waived except by an instrument in writing expressly so providing which is signed by the artist.

8. Removal from building; waiver. Removing a work of fine art from a building is covered by the following provisions.

A. If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration or destruction of the work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of the building and properly recorded, are deemed waived. The instrument, if properly recorded, is binding on subsequent owners of the building.

B. If the owner of a building wishes to remove a work of fine art which is a part of the building but which can be removed from the building without substantial harm to the fine art, the rights and duties created under this section apply unless the owner has diligently attempted without success to notify the artist, or, if the artist is deceased, his heir, legatee or personal representative, in writing of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within 90 days either to remove the work or to pay for its removal. If the work is removed at the expense of the artist, his heir, legatee or personal representative, title to the fine art passes to that person.

C. Nothing in this subsection affects the rights of authorship created in subsection 4.

9. Limitation of actions. No action may be maintained to enforce any liability under this section unless brought within 3 years of the act complained of or one year after discovery of the act, whichever is longer.

STATEMENT OF FACT

This bill provides artists with a right of action for injunctive relief or damages, or both, to protect and preserve works of art. It is modeled after the "California Art Preservation Act."