

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1196

S.P. 444

In Senate, March 25, 2009

An Act To Ensure Royalties to Visual Artists

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ALFOND of Cumberland.
Cosponsored by Representative WEBSTER of Freeport and
Senators: BLISS of Cumberland, GERZOFKY of Cumberland, Representatives:
BUTTERFIELD of Bangor, CAIN of Orono, HASKELL of Portland, MacDONALD of
Boothbay, NELSON of Falmouth.

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

2 **Sec. 1. 10 MRSA c. 208-C** is enacted to read:

3 **CHAPTER 208-C**

4 **VISUAL ARTIST ROYALTIES**

5 **§1299-A. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Art dealer.** "Art dealer" means a person who is actively and principally engaging
9 in or conducting the business of selling works of fine art for which business the person
10 validly holds a sales tax registration certificate issued by the Department of
11 Administrative and Financial Services, Bureau of Revenue Services.

12 **2. Artist.** "Artist" means a person who creates a work of fine art and who, at the
13 time of resale of the work of fine art, is a citizen of the United States or has been a
14 resident of the State for at least the previous 2 years.

15 **3. Fund.** "Fund" means the Maine Arts Commission Visual Artists Fund established
16 in section 1299-C.

17 **4. Work of fine art.** "Work of fine art" means an original painting, sculpture or
18 drawing or an original work of art in glass.

19 **§1299-B. Establishment of required royalties**

20 **1. Royalty.** Except as provided in section 1299-E, when a work of fine art is sold
21 and the seller resides in this State or the sale takes place in this State, the seller or the
22 seller's agent shall pay to the artist of that work of fine art or to that artist's agent a royalty
23 payment that is 5% of the amount of the sale.

24 **2. Waiver.** The right of the artist to receive a royalty payment in an amount equal to
25 5% of the amount of the sale may be waived only by a written contract providing for an
26 amount in excess of 5% of the amount of the sale.

27 **3. Assignment.** An artist may assign the right to collect the royalty payment
28 provided by this section to another individual or entity. An assignment does not have the
29 effect of creating a waiver unless it meets the requirements of subsection 2.

30 **4. Multiple artists.** If 2 or more artists are the principal creators of a work of fine
31 art, then the royalties must be divided among them equally, rounded down to the nearest
32 one cent.

1 **§1299-C. Maine Arts Commission Visual Artists Fund**

2 The Maine Arts Commission shall create and oversee the Maine Arts Commission
3 Visual Artists Fund, for the purpose of holding and distributing funds for artists who are
4 owed royalties under this chapter and have not received those owed royalties.

5 **§1299-D. Operation**

6 **1. Withholding of royalties.** When a work of fine art is sold at an auction or by a
7 gallery, broker, museum or other person acting as the agent for the seller, the agent shall:

8 A. Withhold 5% of the amount of the sale as a royalty;

9 B. Locate the artist; and

10 C. Pay the royalty to the artist.

11 **2. Payment of royalties.** If the seller or agent is unable to locate and pay the artist
12 under subsection 1 within 90 days of the sale of a work of fine art, the amount equal to
13 5% of the amount of sale must be transferred to the fund on the 91st day.

14 **3. Right to pursue damages.** If a seller or agent is unable to locate and pay an artist
15 the royalty in the amount equal to 5% of the sale of a work of fine art by the artist or fails
16 to transfer that royalty amount to the fund, the artist may bring an action for damages
17 within 3 years after the date of the sale or one year after the discovery of the sale,
18 whichever is longer. The prevailing party in any action brought under this section is
19 entitled to reasonable attorney's fees in an amount determined by the court.

20 **4. Claiming funds from the fund.** The Maine Arts Commission shall attempt to
21 locate an artist for whom money is received pursuant to this section. If the commission is
22 unable to locate the artist and the artist does not file a written claim for the money
23 received by the fund within 7 years of the date of the sale of work of fine art that gives
24 rise to the royalty, the right of the artist to claim the royalty terminates, and the money
25 must be transferred to a grant program under the auspices of the Maine Arts Commission
26 that funds school-based arts education projects.

27 **5. Creditor exemption.** Any amount of money held by the seller or agent for the
28 payment of royalties to an artist pursuant to this section is exempt from enforcement of a
29 money judgment by the creditors of the seller or agent.

30 **6. Royalties after the death of an artist.** Upon the death of an artist, the rights and
31 duties created under this section inure to the artist's heirs, legatees or personal
32 representative, until the 20th anniversary of the death of the artist. The provisions of this
33 subsection apply only with respect to an artist who dies after July 1, 2009.

34 **§1299-E. Exemptions**

35 The following transactions are exempt from the payment or collection of royalties
36 under this chapter:

