

12A:2-329 to 12A:2-336 12/10/87

LEGISLATIVE HISTORY CHECKLIST

NJSA: 12A:2-329 to 12A:2-336 ("Artwork Consignment Act")

CHAPTER 132

Laws Of: 1987

Bill No: S383

Sponsor(s): Laskin

Date Introduced: Pre-filed

Committee: Assembly: State Government

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: February 23, 1987.

Senate: July 31, 1986

Date of Approval: June 3, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

APPROVED

132 87
6-3-87

[OFFICIAL COPY REPRINT]

SENATE, No. 383

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator LASKIN

AN ACT concerning sales of crafts and works of fine art on consignment and supplementing chapter 2 of Title 12A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Artworks
2 Consignment Act."

1 2. As used in this act:

2 ***[a.]*** **(1)** "Art dealer" means a person engaged in the busi-
3 ness of selling crafts and works of fine art, other than a person
4 exclusively engaged in the business of selling goods at public
5 auction.

6 ***[b.]*** **(2)** "Artist" means an individual who is the creator of
7 a craft or work of fine art.

8 ***[c.]*** **(3)** "Commission" means a fee, compensation or per-
9 centage of the actual selling price of a craft or work of fine art,
10 which has been agreed upon by the artist and an art dealer, and to
11 which the art dealer is entitled after completion of the sale of the
12 craft or work of fine art to a third party.

13 ***[d.]*** **(4)** "Consignee" means a person who accepts a craft
14 or work of fine art delivered to the person on consignment.

15 ***[e.]*** **(5)** "Consignor" means a person who delivers, or
16 causes the delivery, of a craft or work of fine art to an art dealer
17 on consignment.

18 ***[f.]*** **(6)** "Craft" means an artistic rendition created using
19 any medium, including, but not limited to, a collage and other

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted January 8, 1987.

20 works consisting of any combination of painting, drawing, sculp-
 21 ture, photography and manual creation in clay, textile, fiber, wood,
 22 metal, plastic, glass, stone, leather or similar materials.

23 ***[g.]*** *(7)** “Fine art” means an original work of visual or
 24 graphic art created using any medium, including but not limited
 25 to, a painting, drawing or sculpture.

26 ***[h.]*** *(8)** “On consignment” means delivered into the pos-
 27 session and control of a person in whom title to the delivered
 28 object does not vest but who, by agreement with the consignor, is
 29 authorized to convey the consignor’s right, title and interest in the
 30 object to a third person.

1 3. When an artist or an artist’s representative delivers or causes
 2 the delivery of a craft or work of fine art to an art dealer to be
 3 sold by the art dealer for a commission, the transfer to and accep-
 4 tance by the art dealer of the craft or work on fine art shall be on
 5 consignment.

1 4. ***[a.]** The provisions of N. J. S. 12A:2-326 to the contrary not-
 2 withstanding, a craft or work of fine art accepted on consignment
 3 is trust property being held by the consignee for the benefit of the
 4 consignor.* *(1) Notwithstanding the provision of N. J. S.*
 5 *12A:2-326, the consignor may be protected against the creditors*
 6 *of the consignee where:*

7 *(a) the consignee or consignor places a sign on the craft or work*
 8 *of fine art which states that the item is on consignment; or*

9 *(b) the consignor establishes that the consignee is generally*
 10 *known by his creditors to be substantially engaged in selling the*
 11 *goods of others; or*

12 *(c) the consignor complies with the filing provisions of chapter 9*
 13 *of this title (Uniform Commercial Code-Secured Transactions),*
 14 *thereby perfecting a security interest in the craft or work of fine*
 15 *art.**

16 ***[b.]** Any proceeds due the consignor from the sale of a craft or
 17 work of fine art on consignment are trust funds held by the con-
 18 signee for the benefit of the consignor.* *(2) At the time the craft*
 19 *or work of fine art is placed on consignment, the consignee shall*
 20 *provide the consignor with a written statement of consignor’s*
 21 *rights as set forth in subsection (1) of this section. A consignee*
 22 *who fails to give such notice shall be a petty disorderly person and*
 23 *shall be subject, upon conviction, to the penalties set forth in*
 24 *N. J. S. 2C:43-3.**

25 ***[c.]*** *(3)** A craft or work of fine art initially received on
 26 consignment shall remain ***[trust]*** *the** property ***[pursuant**
 27 **to]*** *of the consignor upon compliance with the provisions of**

28 subsection ***[a.]*** ***(1)*** of this section, notwithstanding the sub-
 29 sequent purchase of the craft or work of fine art by the consignee,
 30 directly or indirectly, for the consignee's own account, until the
 31 terms of the purchase are completed. ***[If the craft or work is**
 32 **resold to a third party who is a buyer in the ordinary course of**
 33 **business before the consignor has been paid in full, the work of**
 34 **fine art shall cease to be trust property, and the proceeds of the re-**
 35 **sale shall be trust funds pursuant to subsection b. of this section to**
 36 **the extent necessary to pay the balance due the consignor.]***

1 5. ***[Property or funds which are held in trust pursuant to**
 2 **section 4 of this act are not subject to the claims, liens or security**
 3 **interest of the creditors of an art dealer.]*** **Crafts or works of fine*
 4 *art placed on consignment in compliance with the provisions of*
 5 *subsection (1) of section 4 are not subject to the claims, liens or*
 6 *security interests of the creditors of the consignee or art dealer.**

1 6. An art dealer shall not accept a craft or work of fine art for
 2 a commission on consignment unless, before the time of acceptance,
 3 the art dealer conveys to the consignor a written receipt describing
 4 the craft or work of fine art delivered to the art dealer and setting
 5 out the terms of the consignment agreement.

1 7. An art dealer who accepts a craft or work of fine art on con-
 2 signment shall be liable in a civil action brought by the consignor
 3 for the loss of or damages to the craft or work of fine art.

1 8. A consignor may not waive his rights under this act unless the
 2 waiver is clear, conspicuous and in writing.

1 9. This act shall take effect immediately.

COMMERCE AND INDUSTRY

Designated the "Artworks Consignment Act."

1 7. An art dealer who accepts a craft or work of fine art on con-
2 signment shall be liable in a civil action brought by the consignor
3 for the loss of or damages to the craft or work of fine art.

1 8. A consignor may not waive his rights under this act unless the
2 waiver is clear, conspicuous and in writing.

1 9. This act shall take effect immediately.

STATEMENT

This bill would offer statutory protection presently unavailable to artists who consign their works for sale. Under New Jersey's Uniform Commercial Code, consigned artwork and other goods are generally subject to the claims of creditors of the store or gallery to which the goods have been consigned and may be seized unless the artist has taken certain steps. The steps may be burdensome for the individual artist who often does not understand the legal implications of consigning their work.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 383

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 8, 1987

The Assembly State Government Committee reports favorably and with committee amendments Senate Bill No. 383.

The bill provides for certain means by which artists who consign their crafts or works of art to an art dealer may prevent those crafts and works of art from being used to satisfy the claims of creditors of that art dealer. The bill would confer such protection where:

(1) the consignee or consignor places a sign on the craft or work of fine art which states that the item is on consignment; or

(2) the consignor establishes that the consignee is generally known by his creditors to be substantially engaged in selling the goods of others; or

(3) the consignor complies with the filing provisions of chapter 9 of Title 12A (Uniform Commercial Code-Secured Transactions), thereby perfecting a security interest in the craft or work of fine art.

Where any of these three alternative provisions applies, the bill provides that the craft or work of art would remain the property of the artist and would not be subject to the claims, liens or security interest of the creditors of an art dealer. The bill requires the consignee to notify the consignor at the time of the consignment of his rights under the bill. Failure to do so would subject the consignee to prosecution as a petty disorderly person.

An art dealer may not accept a craft or work of art for a commission on consignment unless he gives the artist a written receipt describing the craft or work of art and setting forth the terms of the consignment.

Under the bill, an art dealer would be liable to an artist for the loss of or damage to the consigned craft or work of art.

An artist may waive in writing his rights under the provisions of this bill.

COMMITTEE AMENDMENTS:

The committee amended the bill by substituting the provision regarding the various means by which an artist could protect his craft or artwork from claims against his consignee for provisions establishing the consignee as holding the craft or work of art, or proceeds of its sale, in trust for the benefit of the consigning artist until the property or proceeds were returned to him.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 383

STATE OF NEW JERSEY

DATED: JUNE 19, 1986

This bill protects artists who consign their crafts or works of art to art dealers by making these crafts and works of art trust property which is being held by the art dealer for the benefit of the artist and thereby preventing creditors of an art dealer from satisfying their claims by selling the consigned crafts or works of art. The bill also provides that any proceeds due the artist for consigned crafts or works of art are trust funds held by the art dealer for the benefit of the artist. If the art dealer buys a consigned craft or work of art, the craft or work of art will remain a trust property until it is paid for. If the consigned craft or work of art purchased by the art dealer is sold to a third party before the artist is paid, it shall cease to be trust property and that portion of the proceeds of the resale due the artist will be trust funds. The trust property and funds shall not be subject to the claims, liens or security interest of the creditors of an art dealer.

An art dealer may not accept a craft or work of art for a commission on consignment unless he gives the artist a written receipt describing the craft or work of art and setting forth the terms of the consignment.

Under the bill, an art dealer would be liable to an artist for the loss of or damage to the consigned craft or work of art.

An artist may waive in writing his rights under the provisions of this bill.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: THUR., JUNE 4, 1987

Governor Thomas H. Kean today signed the following legislation:

S-383/A-2452, sponsored by Senator Lee Laskin, R-Camden, Assemblywoman Maureen Ogden, R-Essex and Assemblyman Rodney Frelinghuysen, R-Morris, supplements the Uniform Commercial Code by further protecting artists who consign their works to galleries for sale.

The legislation, known as the Artworks Consignment Act, addresses the situation where an artist has entrusted work to a gallery and loses out on the proceeds of a sale should the gallery experience financial difficulties and go bankrupt.

The legislation further subjects an art dealer to a civil penalty for the loss of, or damage to, a work of fine art.

The legislation is effective immediately.

A-1826, sponsored by Assemblyman Rodney Frelinghuysen, R-Morris and Senator Thomas Cowan, D-Hudson, appropriates \$250,000 to the Commission for the Blind and Visually Impaired to fund the State Use Program providing set-aside contracts to approved rehabilitation facilities around the State.

The State Use Program identifies commodities and services produced or provided by blind or other severely handicapped persons in approved facilities that will be set aside for purchase by State agencies.

The legislation is effective immediately.

-more-