

A-Engrossed
House Bill 2708

Ordered by the House April 12
Including House Amendments dated April 12

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Law Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Shields consigned work of fine art or consignor's portion of proceeds from sale of consigned work of fine art from claims of creditor of consignee.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to art law; amending ORS 79.0109, 359.205, 359.210, 359.220, 359.225, 359.230, 359.235,
3 359.240 and 359.250; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 359.205 is amended to read:

6 359.205. (1) Notwithstanding any custom, practice or usage of the trade to the contrary, when-
7 ever [*an artist*] **a consignor** delivers or causes to be delivered a work of [*the artist's own creation*]
8 **fine art** to an art dealer in this state for the purpose of exhibition or sale, or both, on a commission,
9 fee or other basis of compensation, the delivery to, and acceptance [*thereof*] by, the art dealer **of**
10 **the work of fine art** constitutes a consignment unless the delivery to the art dealer is pursuant to
11 an outright sale for which the [*artist*] **consignor** receives or has received compensation for the work
12 of fine art upon delivery.

13 (2) A work of fine art is trust property in the hands of the art dealer, who is trustee for the
14 benefit of the [*artist*] **consignor** until the work of fine art is sold to a bona fide third party.

15 (3) The proceeds of the sale of a work of fine art are trust property in the hands of the art
16 dealer who is trustee for the benefit of the [*artist*] **consignor** until the amount due the [*artist*]
17 **consignor** from the sale is paid. Nothing in this subsection requires a separate trust account for
18 each [*artist*] **consignor**.

19 (4) A work of fine art that is trust property when initially accepted by the art dealer remains
20 trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer
21 directly or indirectly for the art dealer's own account, until the purchase price is paid in full to the
22 [*artist*] **consignor**.

23 (5) The trust relationship described in this section imposes no duty greater than the duties de-
24 scribed in ORS 359.200 to 359.210, 359.220, 359.225, 359.250 and 359.255 and does not give rise to any
25 general trust or fiduciary relationship.

26 **SECTION 2.** ORS 359.210 is amended to read:

27 359.210. (1) A consignment of a work of fine art has the following effect:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) The consignee, after the delivery of fine art, [*shall be considered to be*] **is** the agent of the
2 consignor for the purpose of the exhibition or sale, or both, of the work of fine art within this state.

3 (b) The work of fine art, or the [*artist's*] **consignor's** portion of the proceeds from the sale of
4 [*such*] **the** work, [*shall not be*] **is not** subject to the claims of a creditor [*or*] **of the** consignee.

5 (c) A consignee is liable for the loss of or damage to the work of fine art while it is in the
6 consignee's possession [*where such*] **if the** loss or damage is caused by the failure of the consignee
7 to use the highest degree of care. For the purpose of this subsection, the value of the work of fine
8 art is the value established in a written agreement between the consignor and consignee prior to
9 the loss or damage or, if no written agreement regarding the value of the work of fine art exists,
10 the [*artist's*] **consignor's** portion of the fair market value of the work of fine art.

11 (d) The consignee [*shall*] **may** not be held liable for the loss of[,] or damage to the work of fine
12 art if the [*artist*] **consignor** fails to remove the work within a period of 30 days following the date
13 agreed upon for removal of the work in the written contract between the [*artist*] **consignor** and the
14 consignee or, if no written agreement regarding a removal date exists, 30 days after notice to re-
15 move the work of fine art is sent by registered mail or by certified mail with return receipt to the
16 [*artist*] **consignor** at the [*artist's*] **consignor's** last-known address.

17 (2) Upon written demand from the consignor, the consignee shall furnish the consignor with the
18 name and address of the purchaser of the consignor's work, and the date of purchase and the price
19 paid for the work, for any sale totaling \$100 or more.

20 (3) **The consignee's** failure to furnish the information specified under subsection (2) of this
21 section [*by the consignor shall entitle the artist*] **entitles the consignor** to obtain an injunction
22 [*prohibiting such conduct and in addition,*] **ordering the disclosure of the information and** money
23 damages in an amount equal to three times the [*artist's*] **consignor's** portion of the retail value of
24 the work.

25 **SECTION 3.** ORS 359.220 is amended to read:

26 359.220. [(1)] An art dealer may accept a work of fine art, on a fee, commission or other com-
27 pensation basis, on consignment from [*the artist who created the work of fine art*] **a consignor** only
28 if, prior to or at the time of acceptance, the art dealer enters into a written contract with the
29 [*artist*] **consignor** establishing:

30 [(a)] (1) The retail value of the work of fine art;

31 [(b)] (2) The time within which the proceeds of the sale are to be paid to the [*artist*]
32 **consignor**, if the work of fine art is sold;

33 [(c)] (3) The minimum price for the sale of the work of fine art; and

34 [(d)] (4) The fee, commission or other compensation basis of the art dealer.

35 [(2) *An art dealer who accepts a work of fine art on a fee, commission or other compensation basis*
36 *on consignment from the artist may use or display the work of fine art or a photograph of the work*
37 *of fine art or permit the use or display of work or photograph only if:]*

38 [(a) *The art dealer gives notice to users or viewers that the work of fine art is the work of the*
39 *artist; and]*

40 [(b) *The artist gives prior written consent to the particular use or display.*]

41 **SECTION 4.** ORS 359.225 is amended to read:

42 359.225. The proceeds from a sale of a work of fine art on consignment shall be paid to the
43 consignor within 30 days of receipt by the consignee unless the consignor expressly agrees other-
44 wise in writing. If the sale of the work of fine art is on installment, the funds from the installment
45 shall first be applied to pay any balance due the consignor on the sale, unless the consignor ex-

1 expressly agrees in writing that the proceeds on each installment shall be paid according to the per-
2 centage established by the consignment agreement. The [artist's] **consignor's** portion of funds
3 received on the sale of the work of fine art or on installment [shall not be] **are not** subject to the
4 claims of a creditor of the consignee.

5 **SECTION 5.** ORS 359.230 is amended to read:

6 359.230. Any provision of a contract or agreement [whereby] **pursuant to which** the consignor
7 waives any of the provisions of ORS 359.200 to 359.255 is void.

8 **SECTION 6.** ORS 359.235 is amended to read:

9 359.235. (1) Nothing in ORS 359.200 to 359.255 is intended to affect any written or oral contract
10 or agreement in existence prior to November 1, 1981, unless the parties agree by mutual written
11 consent that ORS 359.200 to 359.255 [shall apply] **apply** or the contract is extended or renewed after
12 November 1, 1981.

13 (2) ORS 359.200 to 359.255 is applicable notwithstanding the absence of, or conflict with, any
14 written agreement, receipt, note or memorandum entered into on or after November 1, 1981, between
15 the consignor and the consignee concerning any matter covered by ORS 359.200 to 359.255. ORS
16 359.200 to 359.255 controls over any conflicting provisions of the Uniform Commercial Code.

17 **SECTION 7.** ORS 359.240 is amended to read:

18 359.240. (1) It [shall be] **is** unlawful for a consignee willfully and knowingly to secrete, withhold
19 or appropriate a work of fine art or the proceeds from [sale thereof] **the sale of a work of fine art**
20 for the consignee's own use or the use of any person other than the consignor, except pursuant to
21 a bona fide sale or as otherwise consistent with the terms of consignment.

22 (2) Violation of this section is a Class C felony.

23 **SECTION 8.** ORS 359.250 is amended to read:

24 359.250. (1) An art dealer [violating] **who violates** ORS 359.220 is liable to the [artist] **consignor**
25 for \$100 plus actual damages, including incidental damages sustained as a result of the violation.

26 (2) If an art dealer violates ORS 359.220, the [artist's] **consignor's** obligation for compensation
27 to the art dealer is voidable by the [artist] **consignor**.

28 **SECTION 9.** ORS 79.0109 is amended to read:

29 79.0109. (1) Except as otherwise provided in subsections (3) and (4) of this section, this chapter
30 applies to:

31 (a) A transaction, regardless of its form, that creates a security interest in personal property
32 or fixtures by contract;

33 (b) An agricultural lien;

34 (c) A sale of accounts, chattel paper, payment intangibles or promissory notes;

35 (d) A consignment;

36 (e) A security interest arising under ORS 72.4010, 72.5050, 72.7110 (3), or 72A.5080 (5), as pro-
37 vided in ORS 79.0110; and

38 (f) A security interest arising under ORS 74.2100 or 75.1180.

39 (2) The application of this chapter to a security interest in a secured obligation is not affected
40 by the fact that the obligation is itself secured by a transaction or interest to which this chapter
41 does not apply.

42 (3) This chapter does not apply to the extent that:

43 (a) A statute, regulation or treaty of the United States preempts this chapter;

44 (b) Another statute of this state expressly governs the creation, perfection, priority or enforce-
45 ment of a security interest created by this state or a governmental unit of this state;

1 (c) A statute of another state, a foreign country, or a governmental unit of another state or a
2 foreign country, other than a statute generally applicable to security interests, expressly governs
3 creation, perfection, priority, or enforcement of a security interest created by the state, country, or
4 governmental unit; [or]

5 (d) The rights of a transferee beneficiary or nominated person under a letter of credit are in-
6 dependent and superior under ORS 75.1140[.]; **or**

7 **(e) A provision of this chapter conflicts with a provision of ORS 359.200 to 359.255.**

8 (4) This chapter does not apply to:

9 (a) A landlord's lien, other than an agricultural lien;

10 (b) A lien, other than an agricultural lien, given by statute or other rule of law for services or
11 materials, but ORS 79.0333 applies with respect to priority of the lien;

12 (c) An assignment of a claim for wages, salary or other compensation of an employee;

13 (d) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale
14 of the business out of which they arose;

15 (e) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is
16 for the purpose of collection only;

17 (f) An assignment of a right to payment under a contract to an assignee that is also obligated
18 to perform under the contract;

19 (g) An assignment of a single account, payment intangible or promissory note to an assignee in
20 full or partial satisfaction of a preexisting indebtedness;

21 (h) A transfer of an interest in or an assignment of a claim under a policy of insurance, other
22 than an assignment by or to a health-care provider of a health-care-insurance receivable and any
23 subsequent assignment of the right to payment, but ORS 79.0315 and 79.0322 apply with respect to
24 proceeds and priorities in proceeds;

25 (i) An assignment of a right represented by a judgment, other than a judgment taken on a right
26 to payment that was collateral;

27 (j) A right of recoupment or setoff, but:

28 (A) ORS 79.0340 applies with respect to the effectiveness of rights of recoupment or setoff
29 against deposit accounts; and

30 (B) ORS 79.0404 applies with respect to defenses or claims of an account debtor;

31 (k) The creation or transfer of an interest in or lien on real property, including a lease or rents
32 thereunder, or a seller's or purchaser's interest in a land sale contract and the proceeds thereof,
33 except to the extent that provision is made for:

34 (A) Liens on real property in ORS 79.0203 and 79.0308;

35 (B) Fixtures in ORS 79.0334;

36 (C) Fixture filings in ORS 79.0501, 79.0502, 79.0512, 79.0516 and 79.0519; and

37 (D) Security agreements covering personal and real property in ORS 79.0604;

38 (L) An assignment of a claim arising in tort, other than a commercial tort claim, but ORS
39 79.0315 and 79.0322 apply with respect to proceeds and priorities in proceeds; or

40 (m) An assignment, in a consumer transaction, of a deposit account from which, under the terms
41 of the account agreement, third party payments may be made by means of a check, draft, negotiable
42 order of withdrawal or other order, but ORS 79.0315 and 79.0322 apply with respect to proceeds and
43 priorities in proceeds.

44 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**
45 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**

1 **on its passage.**

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