

House Bill 2708

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 **as introduced**.

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 359.205, 359.210, 359.220, 359.225, 359.230, 359.235, 359.240 and
3 359.250; 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:

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

30 (b) The work of fine art, or the [*artist's*] **consignor's** portion of the proceeds from the sale of

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 [such] **the** work, [shall not be] **is not** subject to the claims of a creditor [or] **of the** consignee.

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

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

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

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

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

23 359.220. [(1)] An art dealer may accept a work of fine art, on a fee, commission or other com-
 24 pensation basis, on consignment from [the artist who created the work of fine art] **a consignor** only
 25 if, prior to or at the time of acceptance, the art dealer enters into a written contract with the
 26 [artist] **consignor** establishing:

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

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

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

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

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

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

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

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

39 359.225. The proceeds from a sale of a work of fine art on consignment shall be paid to the
 40 consignor within 30 days of receipt by the consignee unless the consignor expressly agrees other-
 41 wise in writing. If the sale of the work of fine art is on installment, the funds from the installment
 42 shall first be applied to pay any balance due the consignor on the sale, unless the consignor ex-
 43 pressly agrees in writing that the proceeds on each installment shall be paid according to the per-
 44 centage established by the consignment agreement. The [artist's] **consignor's** portion of funds
 45 received on the sale of the work of fine art or on installment [shall not be] **are not** subject to the

1 claims of a creditor of the consignee.

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

3 359.230. Any provision of a contract or agreement [*whereby*] **pursuant to which** the consignor
4 waives any of the provisions of ORS 359.200 to 359.255 is void.

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

6 359.235. (1) Nothing in ORS 359.200 to 359.255 is intended to affect any written or oral contract
7 or agreement in existence prior to November 1, 1981, unless the parties agree by mutual written
8 consent that ORS 359.200 to 359.255 [*shall apply*] **apply** or the contract is extended or renewed after
9 November 1, 1981.

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

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

15 359.240. (1) It [*shall be*] **is** unlawful for a consignee willfully and knowingly to secrete, withhold
16 or appropriate a work of fine art or the proceeds from [*sale thereof*] **the sale of a work of fine art**
17 for the consignee's own use or the use of any person other than the consignor, except pursuant to
18 a bona fide sale or as otherwise consistent with the terms of consignment.

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

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

21 359.250. (1) An art dealer [*violating*] **who violates** ORS 359.220 is liable to the [*artist*] **consignor**
22 for \$100 plus actual damages, including incidental damages sustained as a result of the violation.

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

25 **SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
27 **on its passage.**

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