

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure Royalties to Visual Artists**

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

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

### **CHAPTER 208-C**

### **VISUAL ARTIST ROYALTIES**

#### **§ 1299-A. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 1299-D. Operation**

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

- A. Withhold 5% of the amount of the sale as a royalty;
- B. Locate the artist; and
- C. Pay the royalty to the artist.

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

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

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

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

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

### **§ 1299-E. Exemptions**

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

**1. Initial sale.** The initial sale of a work of fine art if the artist has legal title to the work at the time of the initial sale;

**2. Resale of less than \$1,000.** The resale of a work of fine art for a gross sales price of less than \$1,000;

**3. Death of the artist.** Except as provided in section 1299-D, subsection 6, the resale after the death of the artist;

**4. No profit.** The resale of the work of fine art for a gross sales price less than or equal to the purchase price paid by the seller;

**5. Trade of art.** The transfer of a work of fine art that is exchanged for one or more works of fine art, or for a combination of cash, and other property and one or more works of fine art when the fair market value of the property exchanged is less than \$1,000;

**6. Art dealers.** The resale of a work of fine art by an art dealer to a purchaser within 10 years of the initial sale of the work of fine art by the artist to an art dealer only if each intervening resale is between art dealers; and

**7. Permanent fixture of stained glass art.** A sale of work of stained glass art where the work has been permanently attached to real property and is sold as part of the real property to which it is attached.

### **§ 1299-F. Scope of applicability**

This chapter applies to works of fine art created before and after its effective date and to sales of fine art occurring on or after its effective date.

## **SUMMARY**

This bill requires that an artist receive a minimum 5% royalty on the resale of a work of fine art sold for more than \$1,000. It guarantees the right to attempt to pursue damages for the failure to pay royalties. This bill also establishes the Maine Arts Commission Visual Artists Fund for the purpose of holding royalties owed to artists that have not received those royalties yet.