

Small Business and Commerce: Baxter, Chair; Brammer and Shoning.

Amend (5072) to the Bill 216 (of 269)

JAN 30 1986

HOUSE FILE 2178

BY ROSENBERG and SWARTZ

SMALL BUSINESS AND COMMERCE

Passed House, Date 2-18-86 (p. 344) Passed Senate, Date 3-26-86 (p. 899)  
Vote: Ayes 91 Nays 0 Vote: Ayes 47 Nays 0  
Approved May 28, 1986

A BILL FOR

1 An Act to establish a consignment relationship between artists  
2 and art dealers for the sale of the artist's works.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 2178

1 Section 1. NEW SECTION. 556D.1 DEFINITIONS.

2 As used in this Act, unless the context requires otherwise:

3 1. "Artist" means the person who creates a work of fine  
4 art or, if such person is deceased, the person's personal  
5 representative.

6 2. "Fine art" means a painting, sculpture, drawing,  
7 mosaic, photograph, work of graphic art, including an etching,  
8 lithograph, offset print, silk screen, or work of graphic art  
9 of like nature, a work of calligraphy, or a work in mixed  
10 media including a collage, assemblage, or any combination of  
11 these art media. "Fine art" also means crafts which include  
12 work in clay, textiles, fiber, wood, metal, plastic, glass, or  
13 similar materials.

14 3. "Art dealer" means a person engaged in the business of  
15 selling works of fine art, other than a person exclusively  
16 engaged in the business of selling goods at public auction.

17 4. "Consignment" means a delivery of a work of fine art  
18 under which no title to, estate in, or right to possession  
19 superior to that of the consignor vests in the consignee, not-  
20 withstanding the consignee's power or authority to transfer  
21 and convey to a third person all of the right, title, and  
22 interest of the consignor in and to the fine art.

23 Sec. 2. NEW SECTION. 556D.2 CONSIGNMENT.

24 If an artist delivers or causes to be delivered a work of  
25 fine art of the artist's own creation to an art dealer in this  
26 state for the purpose of exhibition or sale on a commission,  
27 fee, or other basis of compensation, the delivery to and  
28 acceptance of the work of fine art by the art dealer is a  
29 consignment, unless the delivery to the art dealer is an  
30 outright sale for which the artist receives or has received  
31 full compensation upon delivery.

32 When an art dealer accepts a work of fine art for the pur-  
33 poses of sale or exhibition and sale to the public on a  
34 commission, fee, or other basis of compensation, there shall  
35 be a contract or agreement between the artist and art dealer

1 which shall include the following provisions:

2 1. That the proceeds of the sale of the work of fine art  
3 shall be delivered to the artist at a time agreed upon by the  
4 artist and the art dealer.

5 2. That the art dealer shall be responsible for the stated  
6 value of the work of fine art in the event of the loss of or  
7 damage to the work of fine art while it is in the possession  
8 of the art dealer.

9 3. That the work of fine art shall be sold by the art  
10 dealer only for the amount agreed upon by the artist in the  
11 contract or agreement and that the art dealer will take only  
12 the commission or fee agreed upon.

13 4. That the work of fine art may be used or displayed by  
14 the art dealer or any other person only with the prior written  
15 consent of the artist and only if the artist is acknowledged  
16 in the use or display of the work of fine art.

17 Sec. 3. NEW SECTION. 556D.3 CONDITIONS OF CONSIGNMENT.  
18 The following apply to consignment:

19 1. The art dealer, after delivery of the work of fine art,  
20 becomes an agent of the artist for the purpose of sale or ex-  
21 hibition of the consigned work of fine art.

22 2. The work of fine art shall be held in trust by the con-  
23 signee for the benefit of the consignor and is not subject to  
24 claim by a creditor of the consignee.

25 3. The consignee is responsible for the loss of or damage  
26 to the work of fine art.

27 4. The proceeds from the sale of the work of fine art  
28 shall be held in trust by the consignee for the benefit of the  
29 artist. The proceeds shall first be applied to pay any  
30 balance due the artist unless the artist expressly agrees  
31 otherwise in writing.

32 Sec. 4. NEW SECTION. 556D.4 CONSIGNMENT -- TRUST  
33 ARRANGEMENT.

34 A consignment remains trust property, even if purchased by  
35 the art dealer, until the price is paid in full to the artist.

1 If the work is resold to a bona fide purchaser before the  
2 artist has been paid in full, the proceeds of the resale  
3 received by the art dealer constitute funds held in trust for  
4 the benefit of the artist to the extent necessary to pay any  
5 balance still due to the artist and the trusteeship continues  
6 until the fiduciary obligation of the art dealer with respect  
7 to the transaction is discharged in full.

8 Sec. 5. NEW SECTION. 556D.5 CONTRACT VOIDABLE.

9 A provision of a contract or agreement where the art dealer  
10 waives a provision of this Act is void.

11 Sec. 6. The provisions of this Act do not apply to a  
12 written contract executed prior to its effective date, unless  
13 either the parties agree by mutual consent that the provisions  
14 of this Act shall apply or the contract is extended or renewed  
15 after the effective date of this act.

16 Sec. 7. This Act takes effect January 1 following its  
17 enactment.

18 EXPLANATION

19 This bill provides that when an artist delivers a work of  
20 art to an art dealer, the delivery is either a sale or a  
21 consignment. If a consignment occurs, the art dealer becomes  
22 the artist's agent and holds the art or the proceeds from its  
23 sale in trust for the artist and the art is not subject to  
24 claims of the dealer's creditors. The artist has first claim  
25 on the proceeds from the sale of the art. The art dealer is  
26 responsible for the art after delivery of the art. The bill  
27 takes effect January 1 following its enactment.

28

29

30

31

32

33

34

35

HOUSE FILE 2178

H-5072

1 Amend House File 2178 as follows:  
2 1. Page 2, line 26, by inserting after the word  
3 "art" the words ", unless otherwise mutually agreed  
4 upon in writing between the artist and art dealer in  
5 which case the art dealer shall be required to  
6 exercise all due diligence and care with regard to the  
7 work of fine art."

H-5072 FILED FEBRUARY 7, 1986 BY COMMITTEE ON SMALL  
BUSINESS AND COMMERCE  
*Adopted as amended by 5111 2/18 (p 343)*

HOUSE FILE 2178

H-5109

1 Amend House File 2178 as follows:  
2 1. Page 1, line 11, by inserting after the word  
3 "media" the words "with an individual retail value of  
4 more than fifty (50) dollars".  
5 2. Page 1, line 13, by inserting after the word  
6 "materials" the words "with an individual retail value  
7 of more than fifty (50) dollars".  
8 3. Page 1, by inserting after line 22 the  
9 following:  
10 "5. "Stated value" means the amount agreed to be  
11 paid to the consignör."  
12 4. Page 2, by striking line 2 and inserting the  
13 following:  
14 "1. That the amount of the proceeds due the artist  
15 from the sale of the work of fine art".  
16 5. Page 2, by striking lines 15 and 16, and  
17 inserting the following: "consent of the artist. The  
18 artist may require that the artist be acknowledged in  
19 the use of the work of fine art."

H-5109 FILED FEBRUARY 17, 1986 BY PAULIN of Plymouth  
*Adopted 2/19/86*

HOUSE FILE 2178

H-5111

1 Amend amendment H-5072 to House File 2178 as follows:  
2 1. Page 1, line 7, by inserting after the word "art."  
3 the following: "In case of a waiver, the burden shall  
4 be on the dealer to demonstrate the waiver was entered  
5 into in good faith."

H-5111 FILED FEBRUARY 18, 1986 BY ROSENBERG of Story  
HUMMEL of Benton  
ADOPTED (p 343)

HOUSE FILE 2178

BY ROSENBERG and SWARTZ

(As Amended and Passed by the House February 18, 1986)

Passed House, Date 2-18-86 (p.344) Passed Senate, Date 3-26-86 (p.899)

Vote: Ayes 91 Nays 0 Vote: Ayes 47 Nays 0

Approved May 28, 1986

Repassed House 4-14-86 (p.1450)  
95-0

Repassed Senate 4-21-86 (p.1297)  
35-0

**A BILL FOR**

- 1 An Act to establish a consignment relationship between artists
- 2 and art dealers for the sale of the artist's works.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 2178

S-5312

- 1 Amend House File 2178 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, lines 11 and 12, by striking the words
- 4 "with an individual retail value of more than fifty
- 5 (50) dollars" and inserting the following: "which is
- 6 one of a kind or is available in a limited issue or
- 7 series".
- 8 2. Page 1, lines 14 and 15, by striking the words
- 9 "with an individual retail value of more than fifty
- 10 (50) dollars" and inserting the following: "which is
- 11 one of a kind or is available in a limited issue or
- 12 series".
- 13 3. Page 3, by striking lines 25 and 26.

S-5312 Filed March 11, 1986

BY COMM. ON JUDICIARY, DOYLE, CHAIR

*Adopted 3/26 (p.899)*

18  
19  
20  
21  
22  
23  
24  
25

1 Section 1. NEW SECTION. 556D.1 DEFINITIONS.

2 As used in this Act, unless the context requires otherwise:

3 1. "Artist" means the person who creates a work of fine  
4 art or, if such person is deceased, the person's personal  
5 representative.

6 2. "Fine art" means a painting, sculpture, drawing,  
7 mosaic, photograph, work of graphic art, including an etching,  
8 lithograph, offset print, silk screen, or work of graphic art  
9 of like nature, a work of calligraphy, or a work in mixed  
10 media including a collage, assemblage, or any combination of  
11 these art media with an individual retail value of more than  
12 fifty (50) dollars. "Fine art" also means crafts which  
13 include work in clay, textiles, fiber, wood, metal, plastic,  
14 glass, or similar materials with an individual retail value of  
15 more than fifty (50) dollars.

16 3. "Art dealer" means a person engaged in the business of  
17 selling works of fine art, other than a person exclusively  
18 engaged in the business of selling goods at public auction.

19 4. "Consignment" means a delivery of a work of fine art  
20 under which no title to, estate in, or right to possession  
21 superior to that of the consignor vests in the consignee, not-  
22 withstanding the consignee's power or authority to transfer  
23 and convey to a third person all of the right, title, and  
24 interest of the consignor in and to the fine art.

25 5. "Stated value" means the amount agreed to be paid to  
26 the consignor.

27 Sec. 2. NEW SECTION. 556D.2 CONSIGNMENT.

28 If an artist delivers or causes to be delivered a work of  
29 fine art of the artist's own creation to an art dealer in this  
30 state for the purpose of exhibition or sale on a commission,  
31 fee, or other basis of compensation, the delivery to and  
32 acceptance of the work of fine art by the art dealer is a  
33 consignment, unless the delivery to the art dealer is an  
34 outright sale for which the artist receives or has received  
35 full compensation upon delivery.

1 When an art dealer accepts a work of fine art for the pur-  
2 poses of sale or exhibition and sale to the public on a  
3 commission, fee, or other basis of compensation, there shall  
4 be a contract or agreement between the artist and art dealer  
5 which shall include the following provisions:

6 1. That the amount of the proceeds due the artist from the  
7 sale of the work of fine art shall be delivered to the artist  
8 at a time agreed upon by the artist and the art dealer.

9 2. That the art dealer shall be responsible for the stated  
10 value of the work of fine art in the event of the loss of or  
11 damage to the work of fine art while it is in the possession  
12 of the art dealer.

13 3. That the work of fine art shall be sold by the art  
14 dealer only for the amount agreed upon by the artist in the  
15 contract or agreement and that the art dealer will take only  
16 the commission or fee agreed upon.

17 4. That the work of fine art may be used or displayed by  
18 the art dealer or any other person only with the prior written  
19 consent of the artist. The artist may require that the artist  
20 be acknowledged in the use of the work of fine art.

21 Sec. 3. NEW SECTION. 556D.3 CONDITIONS OF CONSIGNMENT.

22 The following apply to consignment:

23 1. The art dealer, after delivery of the work of fine art,  
24 becomes an agent of the artist for the purpose of sale or ex-  
25 hibition of the consigned work of fine art.

26 2. The work of fine art shall be held in trust by the con-  
27 signee for the benefit of the consignor and is not subject to  
28 claim by a creditor of the consignee.

29 3. The consignee is responsible for the loss of or damage  
30 to the work of fine art, unless otherwise mutually agreed upon  
31 in writing between the artist and art dealer in which case the  
32 art dealer shall be required to exercise all due diligence and  
33 care with regard to the work of fine art. In case of a  
34 waiver, the burden shall be on the dealer to demonstrate the  
35 waiver was entered into in good faith.

1 4. The proceeds from the sale of the work of fine art  
2 shall be held in trust by the consignee for the benefit of the  
3 artist. The proceeds shall first be applied to pay any  
4 balance due the artist unless the artist expressly agrees  
5 otherwise in writing.

6 Sec. 4. NEW SECTION. 556D.4 CONSIGNMENT -- TRUST  
7 ARRANGEMENT.

8 A consignment remains trust property, even if purchased by  
9 the art dealer, until the price is paid in full to the artist.  
10 If the work is resold to a bona fide purchaser before the  
11 artist has been paid in full, the proceeds of the resale  
12 received by the art dealer constitute funds held in trust for  
13 the benefit of the artist to the extent necessary to pay any  
14 balance still due to the artist and the trusteeship continues  
15 until the fiduciary obligation of the art dealer with respect  
16 to the transaction is discharged in full.

17 Sec. 5. NEW SECTION. 556D.5 CONTRACT VOIDABLE.

18 A provision of a contract or agreement where the art dealer  
19 waives a provision of this Act is void.

20 Sec. 6. The provisions of this Act do not apply to a  
21 written contract executed prior to its effective date, unless  
22 either the parties agree by mutual consent that the provisions  
23 of this Act shall apply or the contract is extended or renewed  
24 after the effective date of this act.

25 Sec. 7. This Act takes effect January 1 following its  
26 enactment.

27  
28  
29  
30  
31  
32  
33  
34  
35

SENATE AMENDMENT TO HOUSE FILE 2178

H-5592

1 Amend House File 2178 as amended, passed and  
2 reprinted by the House as follows:

3 1. Page 1, lines 11 and 12, by striking the words  
4 "with an individual retail value of more than fifty  
5 (50) dollars" and inserting the following: "which is  
6 one of a kind or is available in a limited issue or  
7 series".

8 2. Page 1, lines 14 and 15, by striking the words  
9 "with an individual retail value of more than fifty  
10 (50) dollars" and inserting the following: "which is  
11 one of a kind or is available in a limited issue or  
12 series".

13 3. Page 3, by striking lines 25 and 26.

H-5592 FILED MARCH 28, 1986 RECEIVED FROM THE SENATE  
*House amended & concurred 4/14 (p. 1459)*

HOUSE FILE 2178

H-5753

1 Amend the Senate amendment H-5592 to House File  
2 2178 as amended, passed, and reprinted by the House as  
3 follows:

4 1. Page 1, by inserting after line 12, the following:

5 "\_\_\_\_. Page 1, by striking lines 17 and 18, and  
6 inserting the following: "selling works of fine art,  
7 in a shop or gallery devoted in the majority to works  
8 of fine art, other than a person engaged in the business  
9 of selling goods of general merchandise or at a public  
10 auction.""

H-5753 FILED APRIL 8, 1986 BY PAULIN of Plymouth  
*Adopted 4/14 (p. 1458)*

HOUSE AMENDMENT TO  
SENATE AMENDMENT TO  
HOUSE FILE 2178

S-5699

1 Amend the Senate amendment H-5592 to House File  
2 2178 as amended, passed, and reprinted by the House as  
3 follows:

4 1. Page 1, by inserting after line 12, the  
5 following:

6 "\_\_\_\_. Page 1, by striking lines 17 and 18, and  
7 inserting the following: "selling works of fine art,  
8 in a shop or gallery devoted in the majority to works  
9 of fine art, other than a person engaged in the  
10 business of selling goods of general merchandise or at  
11 a public auction.""

S-5699 Filed April 16, 1986 REC'D FROM THE HOUSE  
*Senate concurred 4/21 (p. 1297)*

HOUSE FILE 2178

AN ACT

TO ESTABLISH A CONSIGNMENT RELATIONSHIP BETWEEN ARTISTS AND  
ART DEALERS FOR THE SALE OF THE ARTIST'S WORKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 556D.1 DEFINITIONS.

As used in this Act, unless the context requires otherwise:

1. "Artist" means the person who creates a work of fine art or, if such person is deceased, the person's personal representative.
2. "Fine art" means a painting, sculpture, drawing, mosaic, photograph, work of graphic art, including an etching, lithograph, offset print, silk screen, or work of graphic art of like nature, a work of calligraphy, or a work in mixed media including a collage, assemblage, or any combination of these art media which is one of a kind or is available in a limited issue or series. "Fine art" also means crafts which include work in clay, textiles, fiber, wood, metal, plastic, glass, or similar materials which is one of a kind or is available in a limited issue or series.
3. "Art dealer" means a person engaged in the business of selling works of fine art, in a shop or gallery devoted in the majority to works of fine art, other than a person engaged in the business of selling goods of general merchandise or at a public auction.
4. "Consignment" means a delivery of a work of fine art under which no title to, estate in, or right to possession superior to that of the consignor vests in the consignee,

notwithstanding the consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to the fine art.

5. "Stated value" means the amount agreed to be paid to the consignor.

Sec. 2. NEW SECTION. 556D.2 CONSIGNMENT.

If an artist delivers or causes to be delivered a work of fine art of the artist's own creation to an art dealer in this state for the purpose of exhibition or sale on a commission, fee, or other basis of compensation, the delivery to and acceptance of the work of fine art by the art dealer is a consignment, unless the delivery to the art dealer is an outright sale for which the artist receives or has received full compensation upon delivery.

When an art dealer accepts a work of fine art for the purposes of sale or exhibition and sale to the public on a commission, fee, or other basis of compensation, there shall be a contract or agreement between the artist and art dealer which shall include the following provisions:

1. That the amount of the proceeds due the artist from the sale of the work of fine art shall be delivered to the artist at a time agreed upon by the artist and the art dealer.
2. That the art dealer shall be responsible for the stated value of the work of fine art in the event of the loss of or damage to the work of fine art while it is in the possession of the art dealer.
3. That the work of fine art shall be sold by the art dealer only for the amount agreed upon by the artist in the contract or agreement and that the art dealer will take only the commission or fee agreed upon.
4. That the work of fine art may be used or displayed by the art dealer or any other person only with the prior written consent of the artist. The artist may require that the artist be acknowledged in the use of the work of fine art.

Sec. 3. NEW SECTION. 556D.3 CONDITIONS OF CONSIGNMENT.

The following apply to consignment:

1. The art dealer, after delivery of the work of fine art, becomes an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art.

2. The work of fine art shall be held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

3. The consignee is responsible for the loss of or damage to the work of fine art, unless otherwise mutually agreed upon in writing between the artist and art dealer in which case the art dealer shall be required to exercise all due diligence and care with regard to the work of fine art. In case of a waiver, the burden shall be on the dealer to demonstrate the waiver was entered into in good faith.

4. The proceeds from the sale of the work of fine art shall be held in trust by the consignee for the benefit of the artist. The proceeds shall first be applied to pay any balance due the artist unless the artist expressly agrees otherwise in writing.

Sec. 4. NEW SECTION. 556D.4 CONSIGNMENT -- TRUST ARRANGEMENT.

A consignment remains trust property, even if purchased by the art dealer, until the price is paid in full to the artist. If the work is resold to a bona fide purchaser before the artist has been paid in full, the proceeds of the resale received by the art dealer constitute funds held in trust for the benefit of the artist to the extent necessary to pay any balance still due to the artist and the trusteeship continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

Sec. 5. NEW SECTION. 556D.5 CONTRACT VOIDABLE.

A provision of a contract or agreement where the art dealer waives a provision of this Act is void.

Sec. 6. The provisions of this Act do not apply to a written contract executed prior to its effective date, unless

either the parties agree by mutual consent that the provisions of this Act shall apply or the contract is extended or renewed after the effective date of this Act.

-----  
DONALD D. AVENSON  
Speaker of the House

-----  
ROBERT T. ANDERSON  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2178, Seventy-first General Assembly.

-----  
JOSEPH O'HERN  
Chief Clerk of the House

Approved May 28, 1986

-----  
TERRY E. BRANSTAD  
Governor