

SENATE BILL 2186

By Campfield

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 20, Part 1; Title 28, Chapter 3; Title 47, Chapter 25 and Title 47, Chapter 9, relative to intellectual property.

WHEREAS, the General Assembly hereby finds and declares that there is a public interest in protecting works of fine art and in preserving the integrity of cultural and artistic creations; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, is amended by adding the following as a new part:

**47-25-2101.** This part shall be known and may be cited as the “Tennessee Art and Cultural Property Protection Act”.

**47-25-2102.** For purposes of this part:

(1) “Art dealer”:

(A) Means a person who is engaged in the business of selling works of fine art and who holds a valid sales tax registration number; and

(B) Does not include a person exclusively engaged in the business of selling goods at public auction;

(2) “Artist” means the creator of a work of fine art or, if such person is deceased, such person’s heir, legatee, or personal representative;

(3) “Commercial use” means fine art created under a work-for-hire arrangement for use in advertising, magazines, newspapers, or other print or electronic media;

(4) "Conserve" means to preserve, or cause to be preserved, a work of fine art by preventing deterioration or damage through appropriate treatment in accordance with prevailing industry standards in order to maintain the structural integrity to the fullest extent possible in an unchanging state;

(5) "Cost of removal" means reasonable costs for the repair of damage to real property caused by the removal of a work of fine art;

(6) "Fine art":

(A) Means an original art work of recognized quality that is:

(i) A visual rendition, including a painting, drawing, sculpture, mosaic, or photograph;

(ii) A work of calligraphy;

(iii) A work of graphic art, including an etching, lithograph, offset print, or silk screen;

(iv) A craft work in materials, including clay, textile, fiber, wood, metal, plastic, or glass; or

(v) A work in mixed media, including a collage or a work consisting of any combination of subdivisions (6)(A)(i)-(iv);

(B) Does not include work prepared under contract for commercial use by its purchaser;

(7) "Frame" means to prepare, or cause to be prepared, a work of fine art for display in a manner customarily considered to be appropriate for a work of fine art in the particular medium;

(8) "Person" means an individual, partnership, corporation, limited liability company, association, organization or other legal entity;

(9) "Organization" means a public or private not-for-profit entity or association, in existence for at least three (3) years at the time an action is filed pursuant to this part, that, as one (1) of its primary business purposes, stages,

displays, or otherwise presents works of fine art to the public or promotes the interests of artists or the arts;

(10) "Restore" means to return, or cause to be returned, a deteriorated or damaged work of fine art as nearly as is feasible to its original state or condition, in accordance with prevailing standards; and

(11) "Right of reproduction" includes the following:

(A) Reproduction of works of fine art as prints suitable for framing;

(B) Facsimile casts of sculpture;

(C) Reproductions used for greeting cards;

(D) Reproductions in general books and magazines not devoted primarily to art, and in newspapers in other than art or news sections, when such reproductions in books, magazines, and newspapers are used for purposes similar to those of material for which the publishers customarily pay;

(E) Art films;

(F) Television, except from stations operated for educational purposes, or on programs for educational purposes from all stations; and

(G) Reproductions used in any form of advertising, including magazines, calendars, newspapers, posters, billboards, films or television.

**47-25-2103.**

(a)

(1) The author of any original work of authorship that is not fixed in any tangible medium of expression has exclusive ownership in the representation or expression of the work as against all persons except a person who originally and

independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration, either directly or with the aid of a machine or device.

(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has exclusive ownership of the work until February 15, 2047, as against all persons except a person who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has exclusive ownership of the invention or design, and in the representation or expression of the invention or design, which continues so long as the invention or design and the representations or expressions made by the inventor or proprietor remain in the possession of the inventor or proprietor.

**47-25-2104.**

(a) Unless otherwise agreed in writing, an original work of authorship not fixed in any tangible medium of expression and created jointly by more than one (1) person is owned by each person in equal proportion.

(b) Unless otherwise agreed in writing, an invention or design created jointly by more than one (1) person is owned as follows:

- (1) If the invention or design is single, in equal proportions; or
- (2) If it is not single, in proportion to the contribution of each person.

**47-25-2105.**

(a) The owner of any rights in any original works of authorship not fixed in any tangible medium of expression may transfer the ownership rights.

(b) The owner of any invention or design, or of any representation or expression of the invention or design, may transfer the owner's proprietary interest in it.

(c)

(1) Whenever a work of fine art is transferred, whether by sale or on commission or otherwise, by or on behalf of the artist who created it, or that artist's heir, legatee, or personal representative, the right of reproduction of the work is reserved to the artist or the artist's heir, legatee, or personal representative until it passes into the public domain by act or operation of law, unless that right is expressly transferred by a written document that references the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent.

(2) If the transfer is pursuant to an employment relationship, the right of reproduction is transferred to the employer, unless it is expressly reserved in writing.

(3) If the transfer is pursuant to a legacy or inheritance, the right of reproduction is transferred to the legatee or heir, unless it is expressly reserved by will or codicil.

(4) Nothing in this subsection (c) shall be construed to prohibit the fair use of a work of fine art.

**47-25-2106.** If the owner of an invention or design intentionally makes it public, any other person may make a copy or reproduction public, without responsibility to the owner.

**47-25-2107.** If the owner of an invention or design does not make it public, any other person who subsequently and originally produces the same invention or design has the same right in the invention or design as the prior inventor, which is exclusive to the same extent against all persons except the prior inventor, or those claiming under a right of the prior inventor.

**47-25-2108.** Private, written correspondence or communications belong to the person to whom they are addressed and delivered; provided, however, such correspondence or communications cannot be published against the will of the writer, except by authority of law.

**47-25-2109.**

(a)

(1) Whenever a work of fine art is sold and the sale takes place in this state or the seller is a resident of this state, the seller or the seller's agent shall pay to the artist or to the artist's agent a royalty payment equal to five percent (5%) of the amount of the sale. The right of the artist to receive the five percent (5%) royalty payment may be waived only by a written contract that provides for a royalty payment in excess of five percent (5%). An artist may assign the right to collect the royalty payment provided by this section; provided, however, the assignment may not create a waiver prohibited by this subsection (a).

(2)

(A) When a work of fine art is sold at auction or by a gallery, dealer, broker, museum, or other person acting as the agent for the seller, the agent shall:

(i) Withhold the royalty payment from the amount of the sale;

(ii) Locate the artist; and

(iii) Pay the artist the royalty payment.

(B) If the seller or the seller's agent is unable to locate and pay the artist within ninety (90) days, the seller or agent shall transfer the royalty payment to the Tennessee arts commission at that time.

(C) If a seller or the seller's agent fails to comply with subdivisions (a)(2)(A) or (B), the artist may bring an action for damages within three (3) years after the date of sale or one (1) year after the discovery of the sale, whichever is longer. The prevailing party in any action brought under this subdivision (a)(2) is entitled to reasonable attorney fees, in an amount as determined by the court.

(D) Moneys received by the Tennessee arts commission pursuant to this subsection (a) shall be deposited in a special fund administered by the Tennessee arts commission.

(E) The Tennessee arts commission shall attempt to locate any artist for whom money is received pursuant to this subsection (a). If the commission is unable to locate the artist and the artist does not file a written claim for the money received by the commission within seven (7) years of the date of sale of the work of fine art, the right of the artist to the royalty payment terminates and such money shall be transferred to the

commission for use to accomplish its duties and objectives pursuant to § 4-20-104.

(F) Any amounts of money held by a seller or a seller's agent for the payment of artists pursuant to this section are exempt from enforcement of a money judgment by the creditors of the seller or the seller's agent.

(G) Upon the death of an artist, the rights and duties created under this section shall inure to the artist's heirs, legatees, or personal representative, until the twentieth anniversary of the death of the artist. This subdivision (a)(2)(G) only applies to an artist who dies on or after the effective date of this act.

(b) Subsection (a) does not apply to the following:

(1) The initial sale of a work of fine art where legal title to such work at the time of such initial sale is vested in the artist;

(2) The resale of a work of fine art for a gross sales price of less than one thousand dollars (\$1,000);

(3) The resale of a work of fine art after the artist's death except as provided in subdivision (a)(2)(G);

(4) The resale of a work of fine art for a gross sales price less than the purchase price paid by the seller;

(5) A work of fine art that is exchanged for one (1) or more works of fine art or for a combination of cash, other property, and one (1) or more works of fine art where the fair market value of the property exchanged is less than one thousand dollars (\$1,000);

(6) The resale of a work of fine art by an art dealer to a purchaser within ten (10) years of the initial sale of the work of fine art by the artist to the art dealer; provided, however, any intervening resales are between art dealers; or

(7) A sale of a work of fine art, including, but not limited to, stained glass art, where the work has been permanently attached to real property and is sold as part of the sale of the real property to which it is attached;

(c) This section shall apply to works of fine art sold or transferred on or after the effective date of this act.

**47-25-2110.**

(a)

(1) No person, except an artist who owns and possesses a work of fine art created by the artist, shall intentionally cause damage to or destroy a work of fine art.

(2) No person who frames, conserves, or restores a work of fine art shall cause damage to or destroy a work of fine art by any act constituting gross negligence.

(b) The artist shall retain the right to claim authorship of a work of fine art, or, for good cause, the right to disclaim authorship.

(c) An artist may commence an action to protect a work of fine art created by the artist or to effectuate a right created by this section to recover or obtain any of the following:

(1) Injunctive relief;

(2) Actual damages;

(3) Punitive damages; provided, in the event that punitive damages are awarded, the court may select an organization or organizations engaged in

charitable or educational activities involving the fine arts in this state to receive a portion or the entire amount of punitive damages awarded;

(4) Reasonable attorneys' fees;

(5) Reasonable expert witness fees; and

(6) Any other relief that the court deems proper.

(d) In determining whether a work of fine art is of recognized quality, the trier of fact shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, or other persons involved with the creation or marketing of fine art.

(e) The rights and duties created under this section:

(1) Exist until the fiftieth anniversary of the death of the artist, with respect to an artist or a deceased artist's heir, beneficiary, devisee, or personal representative;

(2) Co-exist with any other present or future rights and duties; and

(3) May only be waived when done so expressly in a written instrument signed by the artist, except as provided in subdivision (f)(1).

(f)

(1) If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of the work, the rights and duties created under this section shall be deemed waived, unless expressly reserved by a written instrument that is signed by the owner of the building, contains a legal description of the property, and is properly recorded. The instrument, if properly recorded, is binding on subsequent owners of the building.

(2) The rights and duties created under this section apply to an owner of a building who intends to remove a work of fine art that is a part of the building and

can be removed from the building without substantial harm to the work, and who intends to cause or allow the work to suffer physical defacement, mutilation, alteration, or destruction in the course of or after removal, unless:

(A) The owner has diligently attempted without success to notify the artist, or, if the artist is deceased, the artist's heir, beneficiary, devisee, or personal representative, in writing of the owner's intended action affecting the work of fine art; or

(B) The owner provided written notice and the notified person failed within ninety (90) days to remove the work or to pay for its removal. If the work is removed at the expense of the artist, the artist's heir, beneficiary, devisee, or personal representative, title to the work shall pass to such person.

(3) The rights and duties created under this section apply if a work of fine art can be removed from a building scheduled for demolition without substantial physical defacement, mutilation, alteration, or destruction of the work, and the owner of the building has notified the owner of the work of the scheduled demolition or the owner of the building is the owner of the work, and the owner of the work elects not to remove the work, unless:

(A) The owner of the building has diligently attempted without success to notify the artist, or, if the artist is deceased, the artist's heir, beneficiary, devisee, or personal representative, in writing of the intended action affecting the work; or

(B) The owner provided notice and the notified person failed within ninety (90) days to remove the work or to pay for its removal. If the work is removed at the expense of the artist, the artist's heir, beneficiary,

devisee, or personal representative, title to the work shall pass to such person.

(4) Nothing in this subsection (f) shall affect the rights of authorship created in subsection (b).

(g) No action may be maintained to enforce any liability under this section unless brought within three (3) years of the act complained of or one (1) year after discovery of the act, whichever is longer.

(h) This section shall apply to claims based on proscribed acts occurring on or after the effective date of this act to works of fine art whenever created.

**47-25-2111.**

(a) Whenever an exclusive or nonexclusive conveyance of a right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, ownership of the physical work of art shall remain with and be reserved to the artist or owner unless such right of ownership is expressly transferred by a writing signed by the artist, the owner, or the duly authorized agent.

(b) Whenever an exclusive or nonexclusive conveyance of a right to reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art is made by or on behalf of the artist who created it or the owner at the time of the conveyance, any ambiguity with respect to the nature or extent of the rights conveyed shall be resolved in favor of the reservation of rights by the artist or owner, unless federal copyright law provides to the contrary.

**47-25-2112.**

(a) An organization acting in the public interest may commence an action for injunctive relief to preserve or restore the integrity of a work of fine art from acts prohibited by § 47-25-2110(a).

(b) In determining whether a work of fine art is of recognized quality and of substantial public interest, the trier of fact shall rely on the opinions of those described in § 47-25-2110(d).

(c)

(1) If a work of fine art cannot be removed from real property without substantial physical defacement, mutilation, alteration, or destruction of such work, no action to preserve the integrity of the work of fine art may be brought under this section. However, if an organization offers evidence giving rise to a reasonable likelihood that a work of art can be removed from the real property without substantial physical defacement, mutilation, alteration, or destruction of the work, and is prepared to pay the cost of removal of the work, the organization may bring a legal action for a determination of this issue. In that action, the organization is entitled to injunctive relief to preserve the integrity of the work of fine art, but shall also have the burden of proof. The action shall commence within thirty (30) days after filing. No action may be brought under this subdivision if the organization's interest in preserving the work of art is in conflict with an instrument described in § 47-25-2110(f)(1).

(2) If the owner of the real property intends to remove a work of fine art that is part of the real property and can be removed from the real property without substantial harm to the work, and the owner intends to cause or allow the work to suffer physical defacement, mutilation, alteration, or destruction in the course of or after removal, the owner:

(A) Shall provide thirty (30) days' notice of the intended action affecting the work of art if the artist or artist's heir, legatee, or personal representative fails to take action to remove the work of fine art after the notice provided by § 47-25-2110(f)(2). The owner shall publish a written advertisement of such action in a newspaper of general circulation in the area where the work is located. The notice required by this subdivision (c)(2)(A) may run concurrently with the notice required by § 47-25-2110(f). If:

(i) Within the thirty-day period an organization agrees to remove the work of fine art and pay the cost of removal of the work, the payment and removal shall occur within ninety (90) days of the first day of the thirty-day notice; and

(ii) The work of fine art is removed at the expense of an organization, title to the work shall pass to the organization; and

(B) May take the intended action affecting the work if an organization does not agree to remove the work of fine art within the thirty-day period or fails to remove and pay the cost of removal of the work within the ninety-day period.

(d) To effectuate the rights created by this section, the court may:

(1) Award reasonable attorney's and expert witness fees to the prevailing party, in an amount as determined by the court.

(2) Require the organization to post a bond in a reasonable amount as determined by the court.

(e) No action may be maintained under this section unless brought within three (3) years of the act complained of or one (1) year after discovery of such act, whichever is longer.

(f) This section shall apply to claims based on acts to works of fine art occurring on or after the effective date of this act.

SECTION 2. Tennessee Code Annotated, Section 4-20-105(a)(5), is amended by deleting the language “carry out the purposes of this part” and by substituting instead the language “carry out this part and the Tennessee Art and Cultural Property Protection Act, compiled in title 47, chapter 25”.

SECTION 3. If any provision of this act or the application of any provisions of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2014, the public welfare requiring it.