

HOUSE No. 1786

The Commonwealth of Massachusetts

PRESENTED BY:

Chris Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to resale royalties for artists.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Chris Walsh

6th Middlesex

Angelo J. Puppolo, Jr.

12th Hampden

HOUSE No. 1786

By Mr. Walsh of Framingham, a petition (accompanied by bill, House, No. 1786) of Chris Walsh and Angelo J. Puppolo, Jr. relative to resale royalties for artists. Tourism, Arts and Cultural Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to resale royalties for artists.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 104A of the General Laws is hereby amended by adding the
2 following section:-

3 Section 7. (a) For the purposes of this section, the following terms shall have the
4 following meanings, unless the context clearly requires otherwise:

5 “Art dealer”, a person who is actively and principally engaged in or conducting the
6 business of selling works of fine art for which business of such person validly holds a sales tax
7 permit.

8 “Artist”, a person who creates a work of fine art and who, at the time of resale, is a
9 citizen of the United States, or a resident of the commonwealth who has resided in the
10 commonwealth for a minimum of 2 years.

11 “Fine art”, an original painting, sculpture, or drawing, or an original work of art in glass.

12 (b) (1) If a work of fine art is sold and the sale takes place in the commonwealth, the
13 seller or seller's agent shall pay to the artist of such work of fine art or to the artist's agent 5
14 percent of the amount of the sale. The right of the artist to receive an amount equal to 5 percent
15 of the amount of the sale may be waived only by a contract in writing providing for an amount in
16 excess of 5 percent of the amount of such sale. An artist may assign the right to collect the
17 royalty payment provided by this section to another individual or entity. However, the
18 assignment shall not have the effect of creating a waiver prohibited by this section.

19 (2) If a work of fine art is sold at an auction or by a gallery, dealer, broker, museum, or
20 other person acting as the agent for the seller, the agent shall withhold 5 percent of the amount of
21 the sale, locate the artist and pay the artist.

22 (3) If the seller or agent is unable to locate and pay the artist within 90 days, an amount
23 equal to 5 percent of the amount of the sale shall be transferred to the Massachusetts cultural
24 council.

25 (4) If a seller or the seller's agent fails to pay the artist the amount equal to 5 percent of
26 the sale of a work of fine art by the artist or fails to transfer such amount to the Massachusetts
27 cultural council, the artist may bring an action for damages within 3 years after the date of sale or
28 1 year after the discovery of the sale, whichever is longer. The prevailing party in any action
29 brought pursuant to this clause shall be entitled to reasonable attorney fees, in an amount as
30 determined by the court.

31 (5) Money received by the Massachusetts cultural council pursuant to this section shall be
32 deposited in an account in a special deposit fund of the state treasury.

33 (6) The Massachusetts cultural council shall attempt to locate any artist for whom money
34 is received pursuant to this section. If the Massachusetts cultural council is unable to locate the
35 artist and the artist does not file a written claim for the money received by the Massachusetts
36 cultural council within 7 years of the date of the sale of the work of fine art, the right of the artist
37 terminates and such money shall be transferred to the Massachusetts cultural council for use in
38 acquiring fine art for public use, and to support the preservation of existing and creation of new
39 public art in Boston and gateway cities across the commonwealth.

40 (7) Money to be paid to artists pursuant to this section shall be held by any seller or agent
41 and shall be exempt from enforcement of a money judgment by the creditors of the seller or
42 agent.

43 (8) Upon the death of an artist, the rights and duties established pursuant to this section
44 shall be transferred to his or her heirs, legatees or personal representative, until the 20th
45 anniversary of the death of the artist. The provisions of this subsection shall apply only with
46 respect to an artist who dies after this section takes effect.

47 (c) Subsection (b) shall not apply to any of the following:

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

50 (2) the resale of a work of fine art for a gross sales price of less than \$1,000;

51 (3) except as provided in clause (8) of subsection (b), to a resale after the death of such
52 artist;

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

55 (5) a transfer of a work of fine art which is exchanged for one or more works of fine art
56 or for a combination of cash, other property and one or more works of fine art where the fair
57 market value of the property exchanged is less than \$1,000;

58 (6) the resale of a work of fine art by an art dealer to a purchaser within 10 years of the
59 initial sale of the work of fine art by the artist to an art dealer, provided all intervening resales are
60 by art dealers; or

61 (7) a sale of work of stained glass artistry where the work has been permanently attached
62 to real property and is sold as part of the sale of the real property to which it is attached

63 (d) This section shall apply to works of fine art created before and after the date this
64 section takes effect.

65 SECTION 2. If any provision of this act or the application thereof to any person or
66 circumstance is held invalid for any reason, such invalidity shall not affect any other provisions
67 or applications of this act which can be affected, without the invalid provision or application, and
68 to this end the provisions of this act are severable.

69 SECTION 3: This act shall take effect on January 1, 2018.