

No. 1986-161

## AN ACT

HB 490

Providing for the preservation of works of fine art and for the rights of artists.

The General Assembly finds and declares that:

(1) The careers and professional reputations of artists depend on the physical integrity of their works of fine art.

(2) The ongoing creation and preservation of fine art contributes to the cultural enrichment and, therefore, general welfare of the public.

(3) The act of altering, defacing, mutilating or destroying a work of fine art jeopardizes and can cause irreparable damage to the professional and economic interests of the artist.

(4) In order to protect artists, and ultimately preserve art for the benefit and enjoyment of the public, it is necessary to afford artists certain legal rights and remedies in relation to their works of fine art.

General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Fine Arts Preservation Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Artist.” An individual who is the creator of a work of fine art.

“Conserve.” To preserve a work of fine art by retarding or preventing deterioration or damage through appropriate treatment in accordance with prevailing standards in order to maintain the physical integrity of a work of fine art.

“Display.” To exhibit a work of fine art in a manner customarily considered to be appropriate for a work of fine art in the particular medium.

“Fine art.” An original work of visual or graphic art of recognized quality created using any medium. The term shall include, but not be limited to, a painting, drawing or sculpture.

“Frame.” 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.

“Restore.” To return, as nearly as feasible, a deteriorated or damaged work of fine art to its original state or condition in accordance with prevailing standards.

**Section 3. Rights of artists.**

An artist shall retain at all times the right to claim authorship or, on the basis of a violation of section 4, disclaim authorship of any work of fine art of which the artist is the creator.

**Section 4. Mutilation, alteration or destruction of a work.**

(a) **Intentional acts.**—No person, except an artist who owns and possesses a work of fine art which the artist has created, shall intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration or destruction of a work of fine art.

(b) **Gross negligence.**—In addition to the prohibitions contained in subsection (a), no person who frames, conserves or restores a work of fine art shall commit, or authorize the commission of, any physical defacement, mutilation, alteration or destruction of a work of fine art by any act constituting gross negligence.

(c) **Definition.**—As used in this section the term “gross negligence” means the exercise of so slight a degree of care as to justify the belief that a person acted with indifference toward the physical integrity of a work of fine art.

**Section 5. Remedies.**

To effectuate the rights created by this act, the artist may commence an action to recover or obtain any of the following:

- (1) Injunctive relief.
- (2) Actual damages.
- (3) Punitive damages. In the event that punitive damages are awarded, the court shall, in its discretion, select an organization or organizations engaged in charitable or educational activities involving the fine arts in Pennsylvania to receive such damages.
- (4) Reasonable attorney and expert witness fees.
- (5) Any other relief which the court deems proper.

**Section 6. Evidence.**

In determining by a preponderance of the evidence whether a work of art is of recognized quality and thus fine art, as defined in this act, the trier of fact shall rely on the testimony of artists, art dealers, collectors of fine art, curators of art museums and other persons involved with the creation or commercial trade of fine art.

**Section 7. Rights and duties.**

The rights and duties created under this act:

- (1) Shall exist, with respect to a living artist or a deceased artist's heir, legatee or personal representative, until the end of the 50th year following the artist's death.
- (2) May not be waived except by a written statement expressly so providing and signed by the artist or under the conditions prescribed in section 8.
- (3) Shall not exist with respect to a work of fine art created under contract for advertising or other commercial use, unless the contract so provides.

**Section 8. Removal from building; waiver.**

(a) **Alteration unavoidable.**—If a work of fine art cannot be removed from a building without substantial physical defacement, mutilation, alteration or destruction of such fine art, the rights and duties created under this act, unless expressly reserved by an instrument, in writing, signed by the owner of the building, shall be deemed waived. Such instrument shall be binding on subsequent owners of the building.

(b) **Removal without alteration.**—If the owner of a building wishes to remove a work of fine art which is a part of such building but which can be removed from the building without substantial harm to such fine art, the rights and duties created under this act shall apply unless the owner has diligently attempted without success to notify the artist or, if the artist is deceased, his heir, legatee or personal representative, in writing, of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within 90 days either to remove the work of fine art or to pay for its removal. If the work of fine art is removed at the expense of the artist, his heir, legatee or personal representative, title to such fine art shall pass to that person.

(c) **Rights of authorship not affected.**—Nothing in this section shall affect the rights of authorship created in section 3.

(d) **Emergency situations.**—No liability shall accrue to the owner of the building or his agent who removes a work of fine art and, by doing so, causes the work of fine art to be altered, defaced, mutilated or destroyed due to an emergency situation which provides no opportunity for the owner of the building to provide due notice to the artist.

**Section 9. Period of limitation.**

No action may be maintained to enforce any right under this act unless brought within three years of the violation complained of or one year after the discovery of the violation, whichever is later.

**Section 10. Application of act.**

(a) **Location.**—This act shall apply only to works of fine art displayed in a place within this Commonwealth accessible to the public.

(b) **Time.**—This act shall apply to proscribed acts occurring on or after the effective date of this act to works of fine art now existing or hereafter created.

**Section 11. Effective date.**

This act shall take effect in 60 days.

APPROVED—The 11th day of December, A. D. 1986.

DICK THORNBURGH