

HOUSE No. 2933

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:	DATE ADDED:
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>1/15/2015</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>12/9/2019</i>

HOUSE No. 2933

By Mr. Walsh of Framingham, a petition (accompanied by bill, House, No. 2933) of Chris Walsh and Denise Provost relative to resale royalties for artists. Tourism, Arts and Cultural Development.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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. Whenever a work of fine art is sold and the seller resides in the
2 Commonwealth or the sale takes place in the Commonwealth, the seller or seller’s agent shall
3 pay to the artist of such work of fine art or to the artist’s agent 5 percent of the amount of such
4 sale. The right of the artist to receive an amount equal to 5 percent of the amount of such sale
5 may be waived only by a contract in writing providing for an amount in excess of 5 percent of
6 the amount of such sale. An artist may assign the right to collect the royalty payment provided by
7 this section to another individual or entity. However, the assignment shall not have the effect of
8 creating a waiver prohibited by this subdivision.

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

12 (b) If the seller or agent is unable to locate and pay the artist within 90 days, an
13 amount equal to 5 percent of the amount of the sale shall be transferred to the Massachusetts
14 Cultural Council.

15 (c) If a seller of the seller's agent fails to pay the artist the amount equal to 5 percent
16 of the sale of a work of fine art by the artist or fails to transfer such amount to the Massachusetts
17 Cultural Council, the artist may bring an action for damages within three years after the date of
18 sale or one year after the discovery of the sale, whichever is longer. The prevailing party in any
19 action brought under this paragraph shall be entitled to reasonable attorney fees, in an amount as
20 determined by the court.

21 (d) Moneys received by the Massachusetts Cultural Council pursuant to this section
22 shall be deposited in an account in a Special Deposit Fund of the State Treasury.

23 (e) The Massachusetts Cultural Council shall attempt to locate any artist for whom
24 money is received pursuant to this section. If the Massachusetts Cultural Council is unable to
25 locate the artist and the artist does not file a written claim for the money received by the
26 Massachusetts Cultural Council within seven years of the date of the sale of the work of fine art,
27 the right of the artist terminates and such money shall be transferred to the Massachusetts
28 Cultural Council for use in acquiring fine art for public use through the Public Art Commission
29 and/or the Massachusetts Percent for Art Program to support the preservation of existing and
30 creation of new public art in Boston and Gateway Cities across the Commonwealth.

31 (f) Any amounts of money shall be held by any seller or agent for the payment of
32 artists pursuant to this section shall be exempt from enforcement of a money judgment by the
33 creditors of the seller or agent.

34 (g) Upon the death of an artist, the rights and duties created under this section shall
35 inure to his or her heirs, legatees or personal representative, until the 20th anniversary of the
36 death of the artist. The provisions of this paragraph shall be applicable only with respect to an
37 artist who dies after January 1, XXXX? (IN THE CALIFORNIA LAW – THE DATE WAS 7
38 YEARS AFTER THE LAW WAS ENACTED.)

39 SECTION 2: Section 1 shall not apply to any of the following:

40 (a) To the initial sale of a work of fine art where legal title to such work at the time of
41 such initial sale is vested in the artist thereof.

42 (b) To the resale of a work of fine art for a gross sales price of less than one thousand
43 dollars (\$1,000.)

44 (c) Except as provided in paragraph (g) of Section 1, to a resale after the death of
45 such artist.

46 (d) To the resale of the work of fine art for a gross sales price less than the purchase
47 price paid by the seller.

48 (e) To a transfer of a work of fine art which is exchanged for one or more works of
49 fine art or for a combination of cash, other property and one or more works of fine art where the
50 fair market value of the property exchanged is less than one thousand dollars (\$1,000.)

51 (f) To the resale of a work of fine art by an art dealer to a purchaser within 10 years
52 of the initial sale of the work of fine art by the artist to an art dealer, provided all intervening
53 resales are by art dealers

54 (g) To a sale of work of stained glass artistry where the work has been permanently
55 attached to real property and is sold as part of the sale of the real property to which it is attached.

56 SECTION 3: for the purposes of this section, the following terms have the following
57 meanings:

58 (a) Artist means the person who creates a work of fine art and who, at the time of
59 resale, is a citizen of the United States, or a resident of the Commonwealth who has resided in
60 the Commonwealth for a minimum of two years.

61 (b) Fine art means an original painting, sculpture, or drawing, or an original work of
62 art in glass.

63 (c) Art dealer means a person who is actively and principally engaged in or
64 conducting the business of selling works of fine art for which business of such person validly
65 holds a sales tax permit.

66 (d) This section shall become operative on January 1, 2016, and shall apply to works
67 of fine art created before and after its operative date.

68 (e) If any provision of this section or the application thereof to any person or
69 circumstance is held invalid for any reason, such invalidity shall not affect any other provisions
70 or applications of this section which can be effected, without the invalid provision or application,
71 and to this end the provisions of this section are severable.

72 (f) The provisions of this act shall apply to transfers of works of fine art created
73 before or after the effective date of this act.