

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1271 be amended to read as follows:

- 1 Page 1, line 14, delete "Art Dealers and Consignment of Art" and
- 2 insert "**Retail Consignment Sales**".
- 3 Page 1, line 15, delete "subsection" and insert "**subsections**".
- 4 Page 1, line 15, after "(b)" insert "**through (d)**".
- 5 Page 1, line 16, delete "works of art" and insert "**an item**".
- 6 Page 1, line 16, delete "an art dealer" and insert "**a retail**
- 7 **merchant**".
- 8 Page 2, line 1, delete "a work of art" and insert "**an item**".
- 9 Page 2, delete lines 3 through 9, begin a new paragraph, and insert;
- 10 "**(c) This chapter does not apply to an item offered at auction, or**
- 11 **held by an auctioneer before or after being offered at auction.**
- 12 **(d) If a provision of this chapter conflicts with the Uniform**
- 13 **Commercial Code (IC 26-1), the Uniform Commercial Code**
- 14 **controls with respect to that provision.**".
- 15 Page 2, line 10, delete "Sec. 4." and insert "**Sec. 2.**".
- 16 Page 2, line 13, delete "Sec. 5." and insert "**Sec. 3.**".
- 17 Page 2, line 19, delete "Sec. 6." and insert "**Sec. 4.**".
- 18 Page 2, line 20, delete "an artist and an art dealer" and insert "**a**
- 19 **consignor and a retail merchant**".
- 20 Page 2, line 20, delete "the art dealer" and insert "**the retail**
- 21 **merchant**".
- 22 Page 2, line 21, delete "artist's work of art" and insert "**consignor's**
- 23 **item**".
- 24 Page 2, line 23, delete "a work of art" and insert "**an item**".
- 25 Page 2, line 24, delete "Sec. 7." and insert "**Sec. 5.**".
- 26 Page 2, line 26, delete "Sec. 8." and insert "**Sec. 6.**".
- 27 Page 2, line 30, delete "a work of art" and insert "**an item**".
- 28 Page 2, delete lines 34 through 42, begin a new paragraph, and
- 29 insert:
- 30 "**Sec. 7. As used in this chapter, "retail merchant" means a**
- 31 **retail merchant making a retail transaction as described in**

1 **IC 6-2.5-4-1."**

2 Delete page 3, begin a new paragraph, and insert:

3 **"Sec. 8. (a) When a person delivers an item to a retail merchant**
4 **for the purpose of:**

- 5 (1) sale;
6 (2) exhibition; or
7 (3) sale and exhibition;

8 **for a commission, the delivery to and acceptance of the item by the**
9 **retail merchant places the item on consignment, unless the delivery**
10 **is under an outright sale for which the person receives full**
11 **compensation for the item upon delivery.**

12 (b) A retail merchant described in subsection (a) is the agent of
13 the person with respect to an item described in subsection (a).

14 (c) An item described in subsection (a) is trust property and the
15 retail merchant is trustee for the benefit of the person until the
16 item is sold to a bona fide purchaser or returned to the person.

17 (d) Except as provided in subsection (e), this subsection does not
18 apply to a deposit placed by a customer on an item. The proceeds
19 of the sale of an item described in subsection (a) are trust property.
20 The retail merchant is trustee for the benefit of the person until the
21 amount due the person from the sale is paid in full. Unless the
22 retail merchant and the person expressly agree otherwise in
23 writing:

- 24 (1) a retail merchant shall pay the person the proceeds of the
25 sale of an item not later than thirty (30) days after the retail
26 merchant receives the payment; and
27 (2) if the sale of the item is on installment, the retail merchant
28 shall first apply funds from an installment to pay any balance
29 due to the person on the sale.

30 **The terms of an express written agreement that alters a provision**
31 **set forth in subdivision (1) or (2) must be clear and conspicuous.**

32 (e) If:

- 33 (1) a customer who has placed a deposit on an item purchases
34 the item; and
35 (2) the customer's deposit is used in whole or in part to pay
36 for the item;

37 **the deposit shall be treated in accordance with subsection (d).**

38 (f) Except as provided in subsection (g), if an item is lost or
39 damaged while in the possession of a retail merchant, the retail
40 merchant is strictly liable for the loss or damage in an amount
41 equal to the value of the item as set forth in section 11(a)(1) of this
42 chapter.

43 (g) A retail merchant is not liable for the loss of or damage to an
44 item in the retail merchant's possession if:

- 45 (1) the loss or damage occurs more than thirty (30) days after:
46 (A) the date by which the person must remove the item, as
47 specified in a written agreement between the retail
48 merchant and the person; or

- 1 **(B) the date on which the retail merchant sends written**
2 **notice to the person by registered mail at the person's last**
3 **known address that the person must remove the item, if a**
4 **written agreement described in clause (A) does not exist;**
5 **and**
6 **(2) the item was in the retail merchant's possession at the time**
7 **of the loss or damage because the person failed to remove the**
8 **item."**
- 9 Page 4, delete lines 1 through 32.
- 10 Page 4, line 33, delete "Sec. 11." and insert "**Sec. 9.**".
- 11 Page 4, line 33, delete "work of art" and insert "**item**".
- 12 Page 4, line 33, delete "10" and insert "**8**".
- 13 Page 4, line 34, delete "an art dealer" and insert "**a retail**
14 **merchant**".
- 15 Page 4, line 34, delete "work of art" and insert "**item**".
- 16 Page 4, line 35, delete "artist" and insert "**consignor**".
- 17 Page 4, line 36, delete "work of art" and insert "**item**".
- 18 Page 4, line 36, delete "art dealer" and insert "**retail merchant**".
- 19 Page 4, line 37, delete "work of art" and insert "**item**".
- 20 Page 4, line 37, delete "art dealer's" and insert "**retail merchant's**".
- 21 Page 4, line 39, delete "art dealer" and insert "**retail merchant**".
- 22 Page 4, line 39, delete "a work of art" and insert "**an item**".
- 23 Page 4, line 40, delete "artist" and insert "**consignor**".
- 24 Page 4, line 41, delete "work of art" and insert "**item**".
- 25 Page 4, line 42, delete "art dealer" and insert "**retail merchant**".
- 26 Page 5, line 1, delete "artist" and insert "**consignor**".
- 27 Page 5, line 2, delete "artist." and insert "**consignor.**".
- 28 Page 5, line 3, delete "art dealer" and insert "**retail merchant**".
- 29 Page 5, line 5, delete "Sec. 12." and insert "**Sec. 10.**".
- 30 Page 5, delete lines 7 through 41 and insert:
31 "**retail merchant.**
- 32 **Sec. 11. (a) A retail merchant may accept an item for**
33 **commission on consignment from a person only if, not later than**
34 **seven (7) days after accepting the item, the retail merchant enters**
35 **into a written contract with the person that specifies the following:**
36 **(1) The value of the item.**
37 **(2) The time within which the proceeds from the sale must be**
38 **paid to the consignor if the item is sold.**
39 **(3) The commission the retail merchant is to receive if the**
40 **item is sold.**
41 **(4) The minimum price for the sale of the item.**
42 **(5) Any discounts ordinarily given by the retail merchant in**
43 **the regular course of business.**
44 **(b) If a consignor violates this section, the consignor may bring**
45 **an action in a court with jurisdiction to void the consignor's**
46 **contractual obligations to the retail merchant. A retail merchant**
47 **who violates this section is liable to the consignor in an amount**

- 1 **equal to:**
- 2 **(1) fifty dollars (\$50);**
- 3 **(2) any actual, consequential, or incidental damages sustained**
- 4 **by the consignor because of the violation of this section; and**
- 5 **(3) reasonable attorney's fees."**

(Reference is to EHB 1271 as printed April 10, 2009.)

Senator TALLIAN