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## Property; intellectual property-artists' droit moral

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## Property; intellectual property—artists' *droit moral*

NEV. REV. STAT. § 598.— (new).  
SB 17 (Horn); 1989 STAT. Ch. 83

Under existing law, the owner of an interest in certain types of intellectual property has a cause of action against any party that encroaches on the owner's property interest.<sup>1</sup> Chapter 83 recognizes a cause of action for artists whose reputations have been damaged by the public exhibition of their works of art<sup>2</sup> in a defaced, mutilated or altered state; the exhibited work may be the original or a reproduction.<sup>3</sup> Chapter 83 also permits artists to either assert or disclaim authorship of works of art that are presented in a damaging way.<sup>4</sup>

Under Chapter 83, artists and their heirs are presumed to retain the right of reproduction<sup>5</sup> of their work of art after the work is sold.<sup>6</sup> The right of reproduction is lost if any individual is entitled to reproduce the work by operation of law, or if the right is transferred by the artist in writing.<sup>7</sup>

1. See e.g., NEV. REV. STAT. §§ 600.430 (1987) (trademarks); 603.080 (1987) (computer programs).

2. See 1989 Nev. Stat. ch. 83, sec. 2, at 192 (enacting NEV. REV. STAT. § 598.—) (definition of a work of art). Not included within this definition are: (1) Motion pictures; (2) commercial works under contract; (3) work created by an employee in the course of employment, and; (4) work submitted gratis for publication. *Id.*

3. *Id.* sec. 4, at 193 (enacting NEV. REV. STAT. § 598.—). Damage to the artist must be reasonably foreseeable and the work of art must be represented as the artist's. *Id.* Natural deterioration of a work of art over time is not actionable unless damages are caused by negligent conservation. *Id.* The artist may recover damages, attorney's fees, and costs. *Id.* Rights protected under Chapter 83 may be waived in writing by the artist. *Id.* sec. 5, at 193 (enacting NEV. REV. STAT. § 598.—). Other states have enacted statutes that offer protection to an artist's reputation. See e.g., CAL. CIV. CODE § 987 (Deering Supp. 1989) and N.Y. ARTS & CULT. AFF. LAW §§ 14.01-.03 (McKinney 1989). This type of legislative activity resembles the French civil law concept of *droit moral*, which recognizes an artist's "moral rights" to enjoy a personal, non-economic, interest in a work of art as the embodiment of the artist's creativity and a reflection on the artist's reputation. See generally Damich, *The New York Artists' Authorship Rights Act: A Comparative Critique*, 84 COLUM. L. REV. 1733, 1734-35 (1984).

4. 1989 Nev. Stat. ch. 83, sec. 3, at 193 (enacting NEV. REV. STAT. § 598.—). An artist may disclaim authorship of a work of art that is exhibited without the artist's consent and in a form that can be reasonably foreseen as damaging to the artist's reputation. *Id.*

5. See *id.* sec. 6, at 193 (enacting NEV. REV. STAT. § 598.—) (definition of the right of reproduction).

6. *Id.*

7. *Id.* Absent an express writing, a transfer of a right of reproduction is not presumed to transfer ownership of the original work of art. *Id.*

COMMENT

Although legislation of copyright laws is not an exclusively federal concern,<sup>8</sup> Chapter 83 may be preempted by federal copyright law.<sup>9</sup> An argument for preempting a cause of action brought under Chapter 83 may be made if the elements of the cause of action are identical to rights under federal copyright law, or if the purpose and effect of the state cause of action is at odds with federal copyright law.<sup>10</sup>

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8. See *Goldstein v. California*, 412 U.S. 546, 560-70 (1973) (copyright law is not exclusively within federal control and a state is not precluded from promulgating legislation involving copyright law when a statute, making criminal the sale of pirated recordings, avoids similar coverage to the copyright law).

9. See 17 U.S.C. § 301 (1978) (outlining the scope of preemption under the Federal Copyright Act of 1976).

10. Horowitz, *Artists' Rights in the United States: Toward Federal Legislation*, 25 HARV. J. ON LEGIS. 153, 194-9 (1988) (state laws supporting artists' moral rights might avoid sharing identical elements with federal law, but moral rights guaranteed by state law may conflict with economic rights protected by federal law). *But see* Gantz, *Protecting Artists' Moral Rights: A Critique of the California Art Preservation Act as a Model for Statutory Reform*, 49 GEO. WASH. L. REV. 873, 897 (1981) (physical damage to a work of art causing harm to an artist's reputation is not an element of copyright infringement) and Damich, *The New York Artists' Authorship Rights Act: A Comparative Critique*, 84 COLUM. L. REV. 1733, 1738-39 (state law protecting an artist's reputation resembles tort law). A California statute allowing artists to receive royalties upon resale of their works of art was not preempted because federal law did not speak to an artist's royalty interest upon resale of works of art. *Morseburg v. Balyon*, 621 F.2d 972, 977-78 (9th Cir. 1980), *cert. denied*, 449 U.S. 983 (1980). *But cf.* *Ronald Litoff, Ltd. v. American Express Co.*, 621 F.Supp. 981, 986 (S.D.N.Y. 1985) (a state law claim protecting an artist's right of reproduction was preempted because the state law claim was identical to a claim brought under federal law).

### Property: mobile home parks

NEV. REV. STAT. §§ 118B.010, 118B.040, 118B.050, 118B.070, 118B.080, 118B.085, 118B.095, 118B.100, 118B.110, 118B.140, 118B.150, 118B.153, 118B.160, 118B.170, 118B.173, 118B.177, 118B.180, 118B.183, 118B.210, 118B.220, 118B.230, 118B.260 (amended).

SB 230 (Committee on Judiciary); 1989 STAT. Ch. 758

Existing law requires that the landlord of a mobile home park provide a copy of certain statutory provisions with each tenant's