

SENATE BILL No. 54

February 12, 1987, Introduced by Senators FAXON and SEDERBURG and referred to the Committee on Judiciary.

A bill to regulate the sale, exchange, and consignment of certain art objects produced in multiples.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "art multiples sales act".

3 Sec. 1a. As used in this act:

4 (a) "Artist" means the creator of an image depicted by or in
5 a master.

6 (b) "Art merchant" means a person who deals in multiples, or
7 who by his or her occupation holds himself or herself out as
8 having knowledge or skill peculiar to a person who deals in
9 multiples, or who employs a broker, agent, or other intermediary
10 who holds himself or herself out as having knowledge or skill
11 peculiar to a person who deals in multiples. Art merchant
12 includes an auctioneer who sells multiples at public auction, but

1 excludes a consignor or principal of an auctioneer, unless
2 otherwise defined or treated as an art merchant under this act.

3 (c) "Limited edition" means a number of multiples which are
4 produced from a single master, all of which depict the same
5 image, and which bear numbers or other markings to denote that
6 production of multiples from that master is limited to a stated
7 maximum number, or which are otherwise held out as limited to a
8 maximum number.

9 (d) "Master" means a printing plate, stone, block, screen,
10 photographic negative, or other like material which contains an
11 image used to produce multiples.

12 (e) "Multiples" means prints, photographs, photographic neg-
13 atives, or similar objects of visual art which are produced in
14 more than 1 copy and sold, offered for sale, or consigned in,
15 into, or from the state for value exceeding \$100.00 each, exclu-
16 sive of any frame. Multiples includes pages or sheets taken from
17 books or magazines and sold as art objects, but excludes books
18 and magazines.

19 (f) "Person" means an individual, partnership, corporation,
20 association, or other entity, however organized.

21 (g) "Print" means an object of visual art which is created
22 by any of the following processes:

23 (i) Produced by engraving, etching, woodcutting, lithogra-
24 phy, serigraphy, or a similar process.

25 (ii) Produced or developed from a photographic negative.

26 (iii) Produced or developed by a combination of any of the
27 processes described in subparagraphs (i) and (ii).

1 (h) "Proofs" means multiples which depict the same image as,
2 and which are produced from the same master used to produce, a
3 limited edition, but which, whether or not designated as proofs,
4 are set aside from and are in addition to the limited edition to
5 which they relate.

6 (i) "Sale" means sale or exchange.

7 (j) "Signed" means autographed by the artist's own hand, and
8 not by means of mechanical or photographic reproduction, after
9 the multiple was produced, whether or not the master was signed.

10 (k) "Written instrument" means a written agreement, bill of
11 sale, invoice, certificate of authenticity, catalog, or other
12 memorandum describing a multiple which is to be sold or consigned
13 by an art merchant.

14 Sec. 2. (1) An art merchant shall not sell or consign a
15 multiple in, into, or from the state unless a written instrument
16 is furnished to the purchaser or consignee, before the sale or
17 consignment, which states as to each multiple the information
18 required under sections 5, 6, 7, and 8 for the applicable time
19 period. For auctions, this information may be furnished in a
20 catalog or other written material which is readily available for
21 examination and purchase before the sale, if a bill of sale,
22 receipt, or invoice describing the sale is supplied which makes
23 reference to the catalog and lot number in which the information
24 appears.

25 (2) Information supplied pursuant to subsection (1) shall be
26 clearly, specifically, and distinctly addressed to each of the
27 items listed in sections 5, 6, 7, and 8. If an item of

1 information that is required is not applicable or is not known,
2 the art merchant shall state that the item is not applicable or
3 is not known.

4 (3) At the request of a prospective purchaser, the informa-
5 tion required by subsection (1) shall be furnished before payment
6 or the placing of an order for a multiple. If payment is made by
7 the purchaser before delivery of the multiple, the information
8 shall be furnished at the time of or before delivery, in which
9 case, the purchaser shall be entitled to a refund if, for reasons
10 related to the information, the purchaser returns the multiple in
11 substantially the condition in which received, within 30 days
12 after receipt.

13 (4) Except as otherwise provided, this act applies to trans-
14 actions between art merchants and other art merchants, as well as
15 to transactions between art merchants and non-art merchants.

16 Sec. 3. (1) An art merchant shall not cause a catalog, pro-
17 spectus, flyer, or other written material or advertisement to be
18 distributed in, into, or from the state, that solicits a direct
19 sale by inviting transmittal of payment for a specific multiple,
20 unless it clearly states, in close physical proximity to the
21 description of the multiple, 1 of the following:

22 (a) The information required by section 2.

23 (b) The material contained in the following statement, or
24 the statement itself, if the information required by section 2 is
25 supplied before or with delivery of the multiple:

26 "Section 2 of the art multiples sales act, Act No. ____
27 of the Public Acts of ____, being section ____ of the

1 Michigan Compiled Laws, provides for disclosure in writing
2 of certain information concerning multiples of prints and
3 photographs if sold or exchanged for value exceeding
4 \$100.00 each, exclusive of any frame, before the sale or
5 exchange. This law requires disclosure of information such
6 as the identity of the artist, the authenticity of an
7 artist's signature, the medium, whether the multiple is a
8 reproduction, when the multiple was produced, the type of
9 master used to produce the multiple, and the number of
10 multiples in a limited edition. At the request of a pro-
11 spective purchaser, this information shall be furnished
12 before payment or the placing of an order for a multiple.
13 If payment is made before delivery, this information shall
14 be supplied at the time of or before delivery, in which
15 case, the purchaser is entitled to a refund if, for reasons
16 related to the information, the purchaser returns the
17 multiple in substantially the condition in which received,
18 within 30 days after receipt. If, after payment and deliv-
19 ery, it is determined that the information provided is
20 incorrect, the purchaser may be entitled to certain
21 remedies."

22 (2) Subsection (1) is not applicable to general written
23 material or advertising which does not constitute an offer to
24 effect a specific sale.

25 Sec. 4. In each place of business in the state in which an
26 art merchant regularly engages in the sale of multiples, the art

1 merchant shall post, in a conspicuous place, a legible sign
2 substantially stating the following:

3 "Section 2 of the art multiples sales act, Act
4 No. _____ of the Public Acts of _____, being section _____
5 of the Michigan Compiled Laws, provides for the disclosure
6 in writing of certain information concerning certain prints
7 and photographs. This information is available to you in
8 accordance with the law."

9 Sec. 5. (1) All of the following information shall be sup-
10 plied for each multiple produced after the effective date of this
11 act:

12 (a) The name of the artist.

13 (b) If the artist's name appears on the multiple, the source
14 of the name, such as whether the multiple was signed by the
15 artist, whether only the master was signed, whether the artist's
16 name was stamped or estate stamped on the multiple, or whether
17 the name originates from some other stated source.

18 (c) A description of the medium and process used to produce
19 the multiple, such as whether the multiple was produced through
20 etching, engraving, lithography, serigraphy, or photography. If
21 photography was used, the particular method and materials used in
22 the photographic developing process shall be stated. If an
23 established term, in accordance with the usage of the trade,
24 cannot be employed to accurately describe the medium, process, or
25 materials, a brief, clear description shall be made.

26 (d) Whether the artist was deceased at the time the master
27 which produced the multiple was made.

1 (e) Whether the multiple or image on or in the master is a
2 mechanical, photomechanical, or photographic copy or reproduction
3 of an image previously created or produced by the artist in a
4 different stated medium, or on or in a different master, for a
5 purpose other than the creation of the multiple being described.

6 (f) If subdivision (e) is applicable, and if the multiple is
7 not signed, whether the artist authorized or approved, in writ-
8 ing, the multiple or edition of which the multiple is a part.

9 (g) Whether the multiple is a posthumous multiple. As used
10 in this subdivision, "posthumous multiple" means a multiple which
11 was produced after the artist's death, from a master which was
12 created during the artist's life.

13 (h) Whether the multiple was produced from a master which
14 produced a prior limited edition, or from a master which consti-
15 tuted or was made from a reproduction of a prior multiple of the
16 master which produced the prior limited edition.

17 (i) The year or approximate year the multiple was produced.
18 For purposes of sections 7 and 8, as to multiples produced before
19 January 1, 1950, the information shall include the year, approxi-
20 mate year, or period when the master was made which produced the
21 multiple, or when the particular multiple being described was
22 produced, or both.

23 (j) Whether or not the multiple is offered as 1 of a limited
24 edition, and if so, the number of multiples in the limited edi-
25 tion and the method of numbering used, if any.

26 (2) Unless otherwise disclosed, the number of multiples
27 stated pursuant to subsection (1)(j) shall constitute an express

1 warranty that no additional numbered multiples of the same image,
2 exclusive of proofs, have been produced.

3 (3) The number of multiples stated pursuant to subsection
4 (1)(j) shall also constitute an express warranty that no addi-
5 tional multiples of the same image, whether or not designated
6 "proofs", other than trial proofs, numbered or otherwise, have
7 been produced in an amount which exceeds the number in the
8 limited edition by 10 or 10%, whichever is greater.

9 (4) If the additional multiples described in subsection (3)
10 exceed the number specified in that subsection, the information
11 required under subsection (1) shall include the number of proofs
12 other than trial proofs, or other numbered or unnumbered multi-
13 ples, in the same or other editions, produced from the same
14 master, or from another master as described in subsection (1)(h),
15 and whether and how the proofs are signed and numbered.

16 Sec. 6. For a multiple produced after December 31, 1949,
17 and before the effective date of this act, the information
18 required under section 5(1)(a), (b), (c), (d), (e), (g), (i), and
19 (j) shall be supplied.

20 Sec. 7. For a multiple produced after December 31, 1899,
21 and before January 1, 1950, the information required under
22 section 5(1)(a), (b), (c), and (i) shall be supplied.

23 Sec. 8. For a multiple produced before January 1, 1900, the
24 information required under section 5(1)(a), (c), and (i) shall be
25 supplied.

26 Sec. 9. (1) Except as provided in subsection (2),
27 information furnished by an art merchant pursuant to this act

1 shall form a part of the basis of the bargain and shall create an
2 express warranty as to each item of information provided.

3 (2) If an art merchant furnishes the name of the artist pur-
4 suant to section 7 or 8, the art merchant for purposes of that
5 information shall be bound only by section 2 of Act No. 121 of
6 the Public Acts of 1970, being section 442.322 of the Michigan
7 Compiled Laws, except that section shall be considered to include
8 sales to art merchants.

9 (3) The warranty provided in subsection (1) shall not be
10 negated or limited because the art merchant in the written
11 instrument does not use the words "warrant" or "guarantee", or
12 because the art merchant did not have a specific intention or
13 authorization to make the warranty, or because any required
14 statement is, or purports to be, or may be merely the seller's
15 opinion.

16 (4) Except as provided in subsection (5), the existence of a
17 basis in fact for information warranted pursuant to this section
18 is not a defense in an action to enforce the warranty.

19 (5) An art merchant who supplies information under section
20 5(1)(c) in regard to photographs produced before January 1, 1950,
21 or other multiples produced before January 1, 1900, is in compli-
22 ance with the requirements of this act if a reasonable basis in
23 fact existed for the information when provided.

24 (6) A statement made pursuant to section 2(2) that an item
25 of information not supplied is not applicable creates an express
26 warranty that the information is not applicable.

1 (7) A statement made pursuant to section 2(2) disclaiming
2 knowledge as to an item of information is ineffective unless the
3 disclaimer is clearly, specifically, and categorically stated to
4 be applicable to the specific item, and is contained within the
5 physical context of other language setting forth the required
6 information applicable to a particular multiple.

7 Sec. 10. The rights, liabilities, and remedies created by
8 this act are in addition to others provided by law, except where
9 the construction would be unreasonable as a matter of law.

10 Sec. 11. An artist who is not otherwise an art merchant,
11 who sells or consigns a multiple of the artist's own creation,
12 shall for the purposes of that sale or consignment incur the
13 obligations prescribed by this act for an art merchant.

14 Sec. 12. Except as provided in section 14, an art merchant,
15 including an art merchant consignee, who violates this act by
16 failing to provide required information or by supplying informa-
17 tion which is false, mistaken, or erroneous, except for harmless
18 error such as typographical error, is liable to the purchaser to
19 whom the multiple was sold in an amount equal to the considera-
20 tion paid by the purchaser, plus interest from the date of pay-
21 ment at the rate prescribed by section 6013(4) of the revised
22 judicature act of 1961, Act No. 236 of the Public Acts of 1961,
23 being section 600.6013 of the Michigan Compiled Laws, upon return
24 of the multiple in substantially the condition in which received
25 by the purchaser.

26 Sec. 13. If for purposes of effecting the sale of a
27 multiple, an art merchant has agreed to act as the agent for a

1 consignor who is not an art merchant, or if for purposes of
2 supplying the information required by this act, an art merchant
3 has agreed to act as the agent for an artist, the art merchant
4 shall incur the liabilities prescribed by this act with respect
5 to a purchaser. However, if the art merchant can establish that
6 his or her liability results from incorrect information which was
7 provided to the art merchant in writing by the consignor or
8 artist, and that the art merchant in good faith relied on the
9 information, the consignor or artist shall similarly incur the
10 liabilities with respect to the purchaser and the art merchant.

11 Sec. 14. Except as provided in section 13, an artist or art
12 merchant who consigns a multiple to an art merchant for the pur-
13 pose of effecting a sale of the multiple shall not be liable to
14 the purchaser under this act if the consignor complies with the
15 requirements of this act as to the consignee.

16 Sec. 15. (1) In an action to enforce this act all of the
17 following apply:

18 (a) A disclaimer made pursuant to section 2(2) regarding an
19 item of relevant information shall be effective unless the claim-
20 ant can establish that the art merchant failed to make reasonable
21 inquiries, according to custom and usage of trade, to ascertain
22 the information, or that the information would have been ascer-
23 tained as a result of reasonable inquiry.

24 (b) The court may allow a prevailing purchaser the costs of
25 the action together with reasonable attorney and expert witness
26 fees. If the court determines that a purchaser's action was

1 brought in bad faith, it may allow the expenses described in this
2 section to the art merchant as it considers appropriate.

3 (2) An action to enforce this act shall be brought within
4 the period prescribed by section 2725 of the uniform commercial
5 code, Act No. 174 of the Public Acts of 1962, being section
6 440.2725 of the Michigan Compiled Laws for an action for a breach
7 of warranty.

8 Sec. 16. This act shall take effect 6 months after it is
9 enacted into law.

10 Sec. 17. This act shall not take effect unless all of the
11 following bills of the 84th Legislature are enacted into law:

12 (a) Senate Bill No. 55.

13 (b) Senate Bill No. 56.