

SENATE BILL No. 55

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

A bill to amend sections 2 and 4 of Act No. 121 of the Public Acts of 1970, entitled

"An act to provide for the creation and negation of express warranties in the sales of works of fine art,"

being sections 442.322 and 442.324 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 4 of Act No. 121 of the Public
2 Acts of 1970, being sections 442.322 and 442.324 of the Michigan
3 Compiled Laws, are amended to read as follows:

4 Sec. 2. Any provision in any other law to the contrary
5 notwithstanding:

6 (a) ~~When~~ IF an art merchant, in selling or exchanging a
7 work of fine art, furnishes to a buyer of ~~such~~ THE work who is
8 not an art merchant, a written instrument which, in describing

1 the work, identifies it with ~~any~~ AN author or authorship, the
2 description ~~shall be~~ IS presumed to be part of the basis of the
3 bargain and ~~shall create~~ CREATES an express warranty of the
4 authenticity of the authorship as of the date of the sale or
5 exchange. HOWEVER, IF AN ART MERCHANT FURNISHES THE NAME OF AN
6 ARTIST PURSUANT TO SECTION 7 OR 8 OF THE ART MULTIPLES SALES ACT,
7 THE ART MERCHANT FOR PURPOSES OF THAT INFORMATION IS BOUND BY
8 THIS SECTION, WHETHER OR NOT THE PURCHASER IS AN ART MERCHANT.

9 The warranty ~~shall~~ IS not ~~be~~ negated or limited because the
10 art merchant in the written instrument did not use formal words
11 such as "warrant" or "guarantee", ~~or~~ because he OR SHE did not
12 have a specific intention or authorization to make a warranty, or
13 because any statement relevant to authorship is, or purports to
14 be, or is capable of being merely the art merchant's opinion.

15 (b) In construing the degree of authenticity of authorship
16 warranted, due regard shall be given to the terminology used in
17 describing the authorship and the meaning accorded to ~~such~~ THE
18 terminology by the customs and usage of the trade at the time and
19 in the locality where the sale or exchange took place. A written
20 instrument delivered pursuant to a sale which took place in this
21 state which, in describing the work, states, for example:

22 (i) That the work is by a named author or has a named
23 authorship, without any other limiting words, means, unequivocal-
24 ly, that the work is by the named author or has the named
25 authorship.

1 (ii) That the work is attributed to a named author means a
 2 work of the period of the author, attributed to ~~him~~ THE AUTHOR,
 3 but not with certainty by ~~him~~ THE NAMED AUTHOR.

4 (iii) That the work is of the school of a named author means
 5 a work of the period of the author, by a pupil or close follower
 6 of the author but not by the author.

7 Sec. 4. (1) The rights and liabilities created by this act
 8 ~~shall be construed to be~~ ARE in addition to and not in substi-
 9 tution, exclusion, or displacement of other rights and liabili-
 10 ties provided by law, including the law of principal and agent,
 11 except where the construction would, as a matter of law, be
 12 unreasonable.

13 (2) An art merchant who, as buyer, is excluded from obtain-
 14 ing the benefits of an express warranty under this act shall not
 15 be deprived of the benefits of any other provision of law.

16 (3) An art merchant whose warranty of authenticity of
 17 authorship was made in good faith shall not be liable for damages
 18 beyond the return of the purchase price which ~~he~~ THE ART
 19 MERCHANT received.

20 (4) THIS ACT SHALL NOT APPLY, AND THE ART MULTIPLES SALES
 21 ACT SHALL APPLY, TO A RIGHT, LIABILITY, OR OBLIGATION PRESCRIBED
 22 BY THE ART MULTIPLES SALES ACT, EXCEPT AS PROVIDED BY THAT ACT.

23 Section 2. This amendatory act shall not take effect unless
 24 all of the following bills of the 84th Legislature are enacted
 25 into law:

26 (a) Senate Bill No. 54 (request no. 01064'87).

1 (b) Senate Bill No. 56 (request no. 01064'87 b).

2 Section 3. This amendatory act shall take effect 6 months
3 after Senate Bill No. 54 (request no. 01064'87) of the 84th
4 Legislature is enacted into law.