House Legislative Analysis Section

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House Bill 4066 as enrolled
Sponsor: Rep. Perry Bullard

Senate Bill 55 as passed by the Senate
Senate Bill 56 as passed by the Senate
Sponsor: Sen. Jack Faxon

Second Analysis (5-28-87)
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Public Act 121 of 1970 created the works of fine art act to regulate sales of artworks by art dealers to consumers. This act applies to paintings, drawings, or works of graphic art, and provides that a dealer's statement as to the authorship of a work of art will serve as an express warranty of that authorship. The law is, however, of limited effectiveness in regulating the sale of art multiples.

Art multiples, such as photographs, lithographs, woodblock prints, serigraphs (silkscreen prints), or other objects of visual art, are among the most marketable of art works. They are widely traded among art dealers and, because they are reasonably priced, are popular with consumers of moderate means. The true value of an art multiple depends on much more than its authorship. A lithograph by a famous artist, for example, may be worth a great deal if it is one of a very few in a limited edition in which each copy is numbered and individually signed by the artist. It will be worth less if it is unnumbered, or if the artist's signature is in the master so that it is automatically reproduced with each impression. A photographic reproduction of the same work may have only the value of poster art. In order to estimate the true dollar value of an art multiple an art dealer or art consumer must know a good deal more than the artist's name as provided in the works of fine art act.

That act is also limited in that it protects only sales by art dealers to consumers; it provides no protection for art dealers, who must rely on the information given them by other art dealers or by artists. The Michigan Law Revision Commission has recommended that the state adopt legislation to ensure that purchasers of art multiples will be informed of the details of art multiples which may affect their value.

THE CONTENT OF THE BILLS:

House Bill 4066

House Bill 4066 would create the Art Multiples Sales Act to require verification of the authenticity of works of visual art which are produced in multiple copies. The bill would require that specific information about each multiple be provided by a person selling, offering to sell, or consigning any such artwork having a value of more than $100, exclusive of the frame. The bill would affect sales by art merchants to consumers or to other art merchants and would include sales by artists of their own work. The works which would be affected would be those produced from a "master" (such as a photographic negative, woodblock, plate, silkscreen, or other material which contains an image) and run off in quantity. Also included would be pages or sheets taken from books or magazines and sold or offered for sale as artworks, but books or magazines themselves would not be included.

Any written material distributed by an art merchant which offered art multiples for sale would have to contain either the specifically required information or a detailed notice prescribed by the bill that explained rights to information under the law. A buyer could request the information before making a purchase or order. If payment was made before delivery the information would have to be supplied no later than at the time of delivery. The buyer could then obtain a refund based on reasons related to the information, provided the multiple was returned within 30 days in substantially the condition in which it was received. Notice of the bill's requirements would also have to be posted in an art merchant's place of business.

The following information would have to be provided:

For multiples produced after the effective date of the bill:

a) the artist's name;
b) the source of the artist's name if it appeared in the multiple (i.e., individually signed, signed in the master, stamped, etc.);
c) a description of the process used to make the multiple;
d) whether the artist was dead when the master was made;
e) whether the master was itself a copy or reproduction of another work of art;
f) if the master was a copy, whether the artist authorized this edition;
g) whether it was a "posthumous multiple" (i.e., the artist who produced the master had died before the multiple was produced);
h) whether the master had been used before to make a limited edition, or whether the master itself was part of, or a copy of, an earlier limited edition;
i) the year the multiple was produced;
j) whether the multiple was part of a limited edition and, if so, the number of multiples in the edition and the method of numbering them.

For multiples produced between 1950 and the effective date of the bill:

a) the artist's name;
b) the source of the artist's name in the multiple;
c) a description of the process;
d) whether the artist was dead when the master was made;
e) whether the master was a copy of another work of art;
f) whether it was a posthumous multiple;
g) the year the multiple was produced;

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h) whether the multiple was part of a limited edition, the number in the edition, and the method of numbering.

For multiples produced between 1900 and 1949:

a) the artist's name*;
b) the source of the artist's name in the multiple;
c) a description of the process;
d) the year the multiple was produced.

For multiples produced before 1900:

a) the artist's name*;
b) a description of the process;
c) the year the multiple was produced.

* The requirement for the artist's name for works produced before 1950 would be a provision of the works of fine art act that permits less definite identification than prescribed by House Bill 4066 (see House Bill 4067 below).

Unknown or Inapplicable Information

If an art merchant did not know an item of information, or if an item of information was not applicable to a particular multiple, the merchant would have to state as much. Such a disclaimer would have to be addressed to a specific item of information and contained in the text of the language supplying the required information. Information about the medium and process used to make photographs which were produced before 1950, or to make any kind of multiple produced before 1900, would be in compliance with the bill if a reasonable basis in fact existed for the information.

Warranties

Information furnished under the bill would be part of the basis of the bargain and would create an express warranty as to each item of information. A statement of the size of a limited edition would be a warranty that no more than the stated number of multiples has been produced and that the number of proofs of the same image (exclusive of trial proofs) was no greater than ten or ten percent of the limited edition—whichever was greater. ("Proof" would mean a multiple made from the same master in addition to the limited edition, whether or not designated a "proof".)

A statement that an item of information was inapplicable to a particular multiple would constitute a warranty of that inapplicability. A claim of inapplicability or ignorance of an item of information would not be effective if it could be established in court that the art merchant had failed to make reasonable inquiries to ascertain the information.

An art merchant acting as an agent for an artist or consignor would remain liable for misinforming a purchaser unless he or she could show that he or she had relied on incorrect information supplied in writing by the artist or consignor. If this could be shown, then the artist or consignor would be liable to the purchaser and to the art merchant.

Remedies

An art merchant who violated the act would be liable to the purchaser for the amount of the purchase plus interest from the date of the purchase at a rate of 12 percent per year, compounded annually, until the return of the artwork. A court could also require an art merchant found in violation of the act to pay the purchaser reasonable attorney fees. However, if the court found that the purchaser had brought an action in bad faith, it could require the purchaser to pay the art merchant those fees.

Senate Bill 55

Senate Bill 55 would amend the works of fine art act to provide that it would not apply to sales regulated by the Art Multiples Sales Act except for transactions involving art multiples produced before 1950. In such cases the warranty of authorship provisions of the works of fine art act would apply. These provisions allow for identification of a particular artist, for a less definite "attribution" to a particular artist, or to attribution to the school or period of a particular artist.

The works of fine art act applies to sales by art merchants to consumers. Under the bill, if an art merchant furnished the name of the artist for an art multiple produced prior to 1950, the act's warranty of authorship provisions would apply whether the purchaser was a consumer or an art merchant.

MCL 442.322 and 442.324

Senate Bill 56

The Uniform Commercial Code provides that a seller's statement which is merely an affirmation of the value of the goods, or a commendation of them, or which purports only to be the seller's opinion, does not create an express warranty. Senate Bill 56 would exempt sales regulated under the Art Multiples Sales Act from this provision.

MCL 440.2313

Each bill would take effect six months after enactment of House Bill 4066. None of the bills could take effect unless all were enacted.

FISCAL IMPLICATIONS:

The bills have no fiscal implications for the state.

ARGUMENTS:

For:

The bills would protect purchasers in an area of commerce where specialized information is of intrinsic importance to the value of the item being purchased. They would do this while taking into account the problems of the sellers of art multiples as well. Less information would be required about older works, and the seller would be able to declare honest ignorance of specific items of information. The bills will be of value not only to art merchants but also to the great many relatively unsophisticated purchasers of art multiples.