

SFA



BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4066 (as reported with amendments)

Senate Bill 55 (as reported with amendments)

Senate Bill 56 (as reported with amendments)

Sponsors: Representative Perry Bullard (House Bill 4066)

Senator Jack Faxon (Senate Bills 55 and 56)

House Committee: Judiciary (House Bill 4066)

Senate Committee: Judiciary

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Mich. State Law Library

RATIONALE

Public Act 121 of 1970, which regulates the sale of artworks by art dealers to consumers, is considered to be of limited effectiveness in regulating the sale of art multiples. The 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 serves as an express warranty of that authorship.

Art multiples, such as photography, lithographs, woodblock prints, serigraphs (silkscreen prints), or other objects of visual art, are among the most marketable of art works. They are traded widely 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 an accomplished artist, for example, may be worth a great deal more if it is one of a limited edition in which each copy is numbered and individually signed by the artist. An art multiple is worth less if it is unnumbered, or if the artist's signature is in the master and 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 Public Act 121 of 1970.

The Act also is limited in that it protects only sales by art dealers to consumers and 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 this State adopt legislation to ensure that purchasers of art multiples would be informed of details that may affect the value of art multiples.

CONTENT

House Bill 4066 would create the "Art Multiples Sales Act" to regulate the sale and consignment of art reproductions by art merchants. Art merchants would be required to furnish certain information upon the sale, consignment, or advertisement of an art multiple. The provision of required information would create an express warranty as to each item of information, and art merchants could be held liable for the breach of such warranties.

Senate Bill 55 would amend Public Act 121 of 1970 to incorporate a section of the proposed Act in regard to an art merchant's furnishing the name of an artist of certain art multiples.

Senate Bill 56 would amend the Uniform Commercial Code as it pertains to express warranties, to make that law consistent with the warranty provisions of the proposed Act and Public Act 121.

The bills are all tie-barred, and would take effect six months after the enactment of House Bill 4066.

House Bill 4066

Provision of Information

The bill would regulate the sale and consignment of art multiples by art merchants by requiring the provision of certain information. "Multiples" would be defined as prints, photographs, photographic negatives, or similar objects of visual art that are produced in more than one copy and sold, offered for sale, or consigned in, into, or from the State for value exceeding \$100 each. "Art merchant" would mean a person who dealt in multiples, or who by his or her occupation held himself or herself out as having knowledge or skill peculiar to one who dealt in multiples, or who employed an agent who held himself or herself out as having such knowledge or skill. The proposed "Art Multiples Sales Act" would apply to transactions between art merchants, as well as to those between art merchants and nonart merchants, except as otherwise provided. The obligations of an art merchant also would apply to an artist, not otherwise an art merchant, who sold or consigned a multiple of his or her own creation.

An art merchant would be prohibited from selling or consigning a multiple in, into, or from the State unless a written agreement were first furnished to the purchaser or consignee, that stated, for each multiple, the information required by the proposed Act for the applicable time period (discussed below). If an item of required information were inapplicable or unknown, the art merchant would be required to state that fact.

At the request of a prospective purchaser, the required information would have to be furnished before payment or placement of an order for a multiple. If payment were made prior to delivery, the information would have to be furnished at the time of or before delivery. The purchaser would be entitled to a refund if, for reasons related to the information, he or she returned the multiple in substantially the same condition in which it was received, within 30 days of receipt.

An art merchant would be prohibited from causing a catalog, prospectus, flyer, or other written material or advertisement to be distributed in, into, or from the State, that solicited a direct sale by inviting transmittal of payment

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H.B. 4066 & S.B. 55 AND 56 (5-12-87)

for a specific sale, unless it clearly stated either the particular information required under the proposed Act or the requirements of the Act regarding disclosure.

In each place of business in the State in which an art merchant regularly sold multiples, the merchant would be required to post a conspicuous sign stating that the "Art Multiples Sales Act" provided for written disclosure of certain information concerning prints and photographs, and that the information was available.

Information Required

For each multiple produced after the effective date of the proposed act, the following information would have to be supplied:

- a) The artist's name.
- b) If the artist's name appeared on the multiple, whether the multiple were signed, whether only the master were signed, whether the artist's name were stamped on the multiple, or whether the name originated from another stated source. ("Master" would mean a printing plate, stone, block, screen, photographic negative, or other like material that contained an image used to produce multiples.)
- c) A description of the medium and process used to produce the multiple, e.g., etching, engraving, lithography, serigraphy, or photography.
- d) Whether the artist were deceased at the time the master was made.
- e) Whether the multiple or an image on or in the master were a mechanical, photochemical, or photographic copy or reproduction of an image previously created by the artist in a different stated medium, or on or in a different master, for a purpose other than the creation of a described multiple. (If so, and if the multiple were not signed, the information also would have to state whether the artist authorized or approved the multiple or an edition of which the multiple was a part.)
- f) Whether the multiple were produced after the artist's death from a master that had been created during his or her life.
- g) Whether the multiple were produced from a master that produced a prior limited edition, or constituted a reproduction of a prior multiple of the master that produced the prior limited edition.
- h) The year the multiple was produced.
- i) Whether the multiple were offered as one of a limited edition, and if so, the number of multiples in the limited edition and the method of numbering used. If the additional multiples exceeded the number specified, information as to the number of proofs other than trial proofs, or other numbered or unnumbered multiples, in the same or other editions, produced from the same master or a master from a reproduction of prior multiple of the master, and whether and how the proofs are signed and numbered would have to be provided. (Unless otherwise disclosed, the number of multiples stated would constitute an express warranty that no additional numbered multiple of the same image had been produced, and that no additional multiples of the same image had been produced in an amount that exceeded the number in the limited edition by the greater of 10 or 10%.)

For multiples produced after December 31, 1949, and before the effective date of the Act, all of the above information, except that described in paragraph (g), would have to be supplied. For multiples produced between December 31, 1899, and January 1, 1950, the information described in (a), (b), (c), and (h) would be required. For multiples produced before 1900, the information described in (a), (c), and (h) would be required.

Warranties

Under the bill, information furnished by an art merchant pursuant to the proposed Act would form a part of the basis of the bargain and create an express warranty as to each item of information provided. The warranty would not be negated or limited because the art merchant failed to use the word "warranty" or "guarantee" in the written instrument, because the art merchant did not have a specific intention or authorization to make the warranty, or because any required statement was or was purported to be merely the seller's opinion.

A statement by an art merchant that an item of information was inapplicable would create an express warranty that the information did not apply. A disclaimer of knowledge would be ineffective unless the disclaimer were stated clearly and categorically to apply to a specific item, and were contained within the physical context of other language setting forth required information.

If an art merchant furnished an artist's name in regard to a multiple produced before 1950, for purposes of that information the art merchant would be bound only by the section of Public Act 121 of 1970 pertaining to a warranty of authenticity of authorship (discussed below), except that section would be deemed to include sales to art merchants, as well as to nonmerchants.

If an art merchant agreed to act as an agent for a nonmerchant consignor for the purpose of selling a multiple, or as an agent for an artist for the purpose of supplying required information, the art merchant would incur the liabilities prescribed by the proposed Act. If an art merchant's liability resulted from incorrect information provided in writing by the consignor or artist, however, and the merchant relied in good faith on the information, the consignor or artist similarly would incur liability. Otherwise, an artist or art merchant who consigned a multiple to an art merchant for the purpose of selling it would not be liable to the purchaser if the consignor complied with the requirements of the Act as to the consignee.

Violations

The bill specifies that the rights, liabilities and remedies created by the proposed Act would be in addition to others provided by law, except where the construction would be unreasonable as a matter of law.

An art merchant who violated the Act by failing to supply required information, or by supplying false, mistaken, or erroneous information, would be liable to the purchaser in an amount equal to the consideration paid by the purchaser, plus interest from the date of payment at the rate of 12% per year, compounded annually, upon return of the multiple in substantially the same condition as it was received. A court could allow a prevailing party the costs of the action, and could allow a prevailing purchaser reasonable attorney fees. If the court determined that a purchaser's action was brought in bad faith, it could allow the art merchant reasonable attorney fees.

In a proceeding to enforce the Act, a disclaimer of the applicability or a merchant's knowledge of an item of required information would be effective unless the claimant could establish that the art merchant failed to make reasonable inquiries to ascertain the disclaimed information, or that the information would have been ascertained through reasonable inquiry.

An action to enforce a provision of the Act would have to be brought within four years of the date the breach occurred.

Senate Bill 55

Senate Bill 55 would amend Public Act 121 of 1970, which provides that if an art merchant, in selling or exchanging a work of fine art, gives a buyer who is not an art merchant a written instrument that, in describing the work, identifies it with any author or authorship (the creator of the work or the period, culture, source or origin with which the creation of the work is identified), the description is presumed to be part of the basis of the bargain and creates an express warranty of the authenticity of the authorship. Under the bill, however, if an art merchant furnished the name of an artist in regard to a multiple produced prior to 1950, the art merchant would be bound by that provision of Public Act 121 whether or not the purchaser were an art merchant.

The bill also provides that Public Act 121 would not apply, and the Art Multiples Sales Act (which would be created by House Bill 4066) would apply, to a right, liability, or obligation prescribed by the proposed Act, unless the proposed Act provided otherwise.

MCL 442.322 and 442.324

Senate Bill 56

Senate Bill 56 would amend the Uniform Commercial Code to make an exception to the provision that the creation of an express warranty by a seller does not require the seller to use formal words, such as "warrant" or "guarantee", or to have a specific intention to make a warranty, but a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. Under Senate Bill 56, that section would apply except as provided in the Art Multiples Sales Act (proposed by House Bill 4066) and in Public Act 121 of 1970 (which Senate Bill 55 would amend). Under both of those proposals, an art merchant's express warranty would not be negated or limited because the warranty was or was purported to be merely the seller's opinion.

MCL 440.2313

SENATE COMMITTEE ACTION

The Senate Judiciary committee amended House Bill 4066 to tie-bar the bill to Senate Bills 55 and 56, rather than to House Bills 4067 and 4068.

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The bills would protect purchasers in transactions in which detailed specialized information is of intrinsic importance to the value of the item being purchased. The bills also would take into account the problems of the sellers of art multiples, who are frequently charitable organizations that are not professionally equipped to do more than rely upon representations of dealers. Because it is more difficult to gather information on older works, less information would be required about them, and the seller would be able to declare honest ignorance of specific items of information. The bills would be of value not only to art merchants but also to the great many relatively uninformed purchasers of art multiples.

Supporting Argument

The idea of enacting a law in Michigan to govern the sale of art multiples originated as a 1981 recommendation of the Michigan Law Revision Commission. In addition, the bills represent a uniform state law on the sale of art multiples. Upon passage of the bills, Michigan again would follow the lead of New York, which Michigan previously followed in enacting Public Act 121 of 1970.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.