

## ART MULTIPLES SALES ACT

### Act 40 of 1987

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

*The People of the State of Michigan enact:*

#### **442.351 Short title.**

##### Sec. 1.

This act shall be known and may be cited as the “art multiples sales act”.

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.351a Definitions.**

##### Sec. 1a.

As used in this act:

- (a) “Artist” means the creator of an image depicted by or in a master.
- (b) “Art merchant” means a person who deals in multiples, or who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to a person who deals in multiples, or who employs a broker, agent, or other intermediary who holds himself or herself out as having knowledge or skill peculiar to a person who deals in multiples. Art merchant includes an auctioneer who sells multiples at public auction, but excludes a consignor or principal of an auctioneer, unless otherwise defined or treated as an art merchant under this act.
- (c) “Limited edition” means a number of multiples which are produced from a single master, all of which depict the same image, and which bear numbers or other markings to denote that production of multiples from that master is limited to a stated maximum number, or which are otherwise held out as limited to a maximum number.
- (d) “Master” means a printing plate, stone, block, screen, photographic negative, or other material which contains an image used to produce multiples.
- (e) “Multiples” means prints, photographs, photographic negatives, or other objects of visual art which are produced in more than 1 copy and sold, offered for sale, or consigned in, into, or from the state for value exceeding \$100.00 each, exclusive of any frame, including pages or sheets taken from books or magazines and sold or offered for sale as art objects, but not including books and magazines.
- (f) “Person” means an individual, partnership, corporation, association, or other entity, however organized.
- (g) “Print” means an object of visual art which is created by any of the following processes:
  - (i) Produced by engraving, etching, woodcutting, lithography, serigraphy, or a similar process.
  - (ii) Produced or developed from a photographic negative.
  - (iii) Produced or developed by a combination of any of the processes described in subparagraphs (i) and (ii).
- (h) “Proofs” means multiples which depict the same image as, and which are produced from the same master used to produce, a limited edition, but which, whether or not designated as proofs, are set aside from and are in addition to the limited edition to which they relate.
- (i) “Sale” means sale or exchange.
- (j) “Signed” means autographed by the artist's own hand, and not by means of mechanical or photographic reproduction, after the multiple was produced, whether or not the master was signed.
- (k) “Written instrument” means a written agreement, bill of sale, invoice, certificate of authenticity, catalog, or other memorandum describing a multiple which is to be sold or consigned by an art merchant.

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.352 Information required; transactions to which act applicable.**

##### **Sec. 2.**

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

(2) Information supplied pursuant to subsection (1) shall be clearly, specifically, and distinctly addressed to each of the items listed in sections 5, 6, 7, and 8. If an item of information that is required is not applicable or is not known, the art merchant shall state that the item is not applicable or is not known.

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

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.353 Catalog, prospectus, flyer or other written material or advertisement.**

##### **Sec. 3.**

(1) An art merchant shall not cause a catalog, prospectus, flyer, or other written material or advertisement to be distributed in, into, or from the state, that solicits a direct sale by inviting transmittal of payment for a specific multiple, unless it clearly states, in close physical proximity to the description of the multiple, 1 of the following:

(a) The information required by section 2.

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

“Section 2 of the art multiples sales act, Act No. \_\_\_\_ of the Public Acts of \_\_\_\_, being section \_\_\_\_ of the Michigan Compiled Laws, provides for disclosure in writing of certain information concerning multiples of prints and photographs if sold or exchanged for value exceeding \$100.00 each, exclusive of any frame, before the sale or exchange. This law requires disclosure of information such as the identity of the artist, the authenticity of an artist's signature, the medium, whether the multiple is a reproduction, when the multiple was produced, the type of master used to produce the multiple, and the number of multiples in a limited edition. At the request of a prospective purchaser, this information shall be furnished before payment or the placing of an order for a multiple. If payment is made before delivery, this information shall be supplied at the time of or before delivery, in which case, the purchaser is entitled to a refund if, for reasons related to the information, the purchaser returns the multiple in substantially the condition in which received, within 30 days after receipt. If, after payment and delivery, it is determined that the information provided is incorrect, the purchaser may be entitled to certain remedies.”

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.354 Posting of legible sign.**

Sec. 4.

In each place of business in the state in which an art merchant regularly engages in the sale of multiples, the art merchant shall post, in a conspicuous place, a legible sign substantially stating the following:

“Section 2 of the art multiples sales act, Act No. \_\_\_\_\_ of the Public Acts of \_\_\_\_\_, being section \_\_\_\_\_ of the Michigan Compiled Laws, provides for the disclosure in writing of certain information concerning certain prints and photographs. This information is available to you in accordance with the law.”

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.355 Information to be supplied for each multiple; express warranty.**

Sec. 5.

(1) All of the following information shall be supplied for each multiple produced after the effective date of this act:

(a) The name of the artist.

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

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

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

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

(f) If subdivision (e) is applicable, and if the multiple is not signed, whether the artist authorized or approved, in writing, the multiple or edition of which the multiple is a part.

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

(h) Whether the multiple was produced from a master which produced a prior limited edition, or from a master which constituted or was made from a reproduction of a prior multiple of the master which produced the prior limited edition.

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

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

(k) If the additional multiples described in subsection (3) exceed the number specified in that subsection, 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 from another master as described in subdivision (h), and whether and how the proofs are signed and numbered.

(2) Unless otherwise disclosed, the number of multiples stated pursuant to subsection (1)(j) shall constitute an express warranty that no additional numbered multiples of the same image, exclusive of proofs, have been produced.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

**442.356 Supplying information for multiple produced after December 31, 1949.**

Sec. 6.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

**442.357 Supplying information for multiple produced after December 31, 1899.**

Sec. 7.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

**442.358 Supplying information for multiple produced before January 1, 1900.**

Sec. 8.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

**442.359 Information as basis of bargain; express warranty; effect of furnishing name of artist; negating or limiting warranty; defense in action to enforce warranty; information regarding photographs; statement that information not applicable; disclaimer.**

Sec. 9.

(1) Except as provided in subsection (2), information furnished by an art merchant pursuant to this act shall form a part of the basis of the bargain and shall create an express warranty as to each item of information provided.

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

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

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

(5) An art merchant who supplies information under section 5(1)(c) in regard to photographs produced before

January 1, 1950, or other multiples produced before January 1, 1900, is in compliance with the requirements of this act if a reasonable basis in fact existed for the information when provided.

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

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.360 Rights, liabilities, and remedies cumulative.**

Sec. 10.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.361 Incurring obligations prescribed for art merchant.**

Sec. 11.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.362 Violation; liability.**

Sec. 12.

Except as provided in section 14, an art merchant, including an art merchant consignee, who violates this act by failing to provide required information or by supplying information which is false, mistaken, or erroneous, except for harmless error such as typographical error, is liable to the purchaser to whom the multiple was sold 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 condition in which received by the purchaser.

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.363 Art merchant as agent for consignor or artist; liabilities; effect of good faith reliance on incorrect information.**

Sec. 13.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.364 Liability of consignor to purchaser.**

Sec. 14.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.365 Action to enforce act.**

Sec. 15.

(1) In an action to enforce this act all of the following apply:

(a) A disclaimer made pursuant to section 2(2) regarding an item of relevant information shall be effective unless the claimant can establish that the art merchant failed to make reasonable inquiries, according to custom and usage of trade, to ascertain the information, or that the information would have been ascertained as a result of reasonable inquiry.

(b) The court may allow a prevailing party the costs of the action, and may allow a prevailing purchaser reasonable attorney fees. If the court determines that a purchaser's action was brought in bad faith, it may allow the art merchant reasonable attorney fees.

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

**History:** 1987, Act 40, Eff. Dec. 9, 1987

#### **442.366 Effective date.**

Sec. 16.

This act shall take effect 6 months after it is enacted into law.

**History:** 1987, Act 40, Eff. Dec. 9, 1987

**442.367 Conditional effective date.**

Sec. 17.

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

- (a) Senate Bill No. 55.
- (b) Senate Bill No. 56.

**History:** 1987, Act 40, Eff. Dec. 9, 1987