

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1052 Session of
1995

INTRODUCED BY CLYMER, FICHTER, CONTI, GEIST, TIGUE, HENNESSEY,
DIGIROLAMO, CLARK, PITTS, READSHAW, BARD, STABACK, LYNCH,
YOUNGBLOOD, SATHER, TRELLO, LAUGHLIN, E. Z. TAYLOR, MERRY,
OLASZ, CIVERA, MICHLOVIC, GANNON, BATTISTO, PISTELLA,
BELFANTI, LEDERER AND STEIL, MARCH 7, 1995

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 7, 1995

AN ACT

1 Regulating the purchase and sale of visual works of art produced
2 in multiples; and providing for the disclosure to prospective
3 art purchasers of information relating to works of art, for
4 warranties, remedies and enforcement and for certain civil
5 and criminal penalties.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Art Law.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Art merchant." A person who is in the business of dealing,
15 exclusively or nonexclusively, in the visual art objects
16 produced in multiples to which this act is applicable, or a
17 person who by his occupation holds himself out as having
18 knowledge or skill peculiar to such works, or to whom such

1 knowledge or skill may be attributed by his employment of an
2 agent or other intermediary who by his occupation holds himself
3 out as having such knowledge or skill. The term includes an
4 auctioneer who sells such works at public auction, but excludes
5 persons not otherwise defined or treated as art merchants in
6 this act who are consignors or principals of auctioneers.

7 "Artist." The person who conceived or created the image
8 which is contained in or constitutes the master.

9 "Consumer Protection Law." The act of December 17, 1968
10 (P.L.1224, No.387), known as the Unfair Trade Practices and
11 Consumer Protection Law.

12 "Limited edition." Visual art multiples produced from a
13 master, all of which are the same image and bear numbers or
14 other markings to denote the limited production thereof to a
15 stated maximum number of multiples, or are otherwise held out as
16 limited to a maximum number of multiples.

17 "Master." A printing plate, stone, block, screen,
18 photographic negative or other like material which contains an
19 image used to produce visual art objects in multiples.

20 "Person." An individual, partnership, corporation,
21 association or other entity, however organized.

22 "Print." In addition to meaning a multiple produced by, but
23 not limited to, such processes as engraving, etching,
24 woodcutting, lithography and serigraphy, also means multiples
25 produced or developed from photographic negatives, or any
26 combination thereof.

27 "Proofs." Multiples which are the same as, and which are
28 produced from the same master as, the multiples in a limited
29 edition, but which, whether so designated or not, are set aside
30 from and are in addition to the limited edition to which they

1 relate.

2 "Signed." Autographed by the artist's own hand, and not by
3 mechanical means of reproduction, after the multiple was
4 produced, whether or not the master was signed or unsigned.

5 "Visual art multiples" or "multiples." Prints, photographs
6 (positive or negative) and similar art objects produced in more
7 than one copy and sold, offered for sale or consigned in, into
8 or from this Commonwealth for an amount in excess of \$100
9 exclusive of any frame. The term includes pages or sheets taken
10 from books and magazines and offered for sale or sold as visual
11 art objects. The term does not include books and magazines.

12 "Written instrument." A written or printed agreement, bill
13 of sale, invoice, certificate of authenticity, catalogue or any
14 other written or printed note or memorandum or label describing
15 the multiple which is to be sold, exchanged or consigned by an
16 art merchant.

17 Section 3. Full disclosure in sale of certain visual art
18 objects produced in multiples.

19 (a) General rule.--An art merchant shall not sell or consign
20 a multiple in, into or from this Commonwealth unless a written
21 instrument is furnished to the purchaser or consignee, at his
22 request, or in any event prior to a sale or consignment, which
23 sets forth as to each multiple the descriptive information
24 required by this act for the appropriate time period. If a
25 prospective purchaser so requests, the information shall be
26 transmitted to him prior to the payment or placing of an order
27 for a multiple. If payment is made by a purchaser prior to
28 delivery of such an art multiple, this information shall be
29 supplied at the time of or prior to delivery. With respect to
30 auctions, this information may be furnished in catalogues or

1 other written materials which are readily available for
2 consultation and purchase prior to sale, provided that a bill of
3 sale, receipt or invoice describing the transaction is then
4 provided which makes reference to the catalogue and lot number
5 in which the information is supplied. Information supplied under
6 this subsection shall be clearly, specifically and distinctly
7 addressed to each item as required by this act for any time
8 period unless the required data is not applicable. This section
9 is applicable to transactions by and between merchants,
10 nonmerchants and others considered art merchants for the
11 purposes of this act.

12 (b) Notice requirement for catalogue, prospectus, etc.--An
13 art merchant shall not cause a catalogue, prospectus, flyer or
14 other written material or advertisement to be distributed in,
15 into or from this Commonwealth which solicits a direct sale, by
16 inviting transmittal of payment for a specific multiple, unless
17 it clearly sets forth, in close physical proximity to the place
18 in such material where the multiple is described, the
19 descriptive information required by this act for the appropriate
20 time period. In lieu of this required information, the written
21 material or advertising may set forth the material contained in
22 the following quoted passage, or the passage itself, containing
23 terms the nonobservance of which shall constitute a violation of
24 this act, if the art merchant then supplies the required
25 information prior to or with delivery of the multiple:

26 "The act of (P.L. , No.), known as
27 the Art Law provides for disclosure in writing of certain
28 information concerning multiples of prints and
29 photographs when sold for more than \$100 each, exclusive
30 of any frame, and of sculpture when sold for more than

1 \$1,500, prior to effecting a sale of them. This law
2 requires disclosure of such matters as the identity of
3 the artist, the artist's signature, the medium, whether
4 the multiple is a reproduction, the time when the
5 multiple was produced, use of the master which produced
6 the multiple and the number of multiples in a 'limited
7 edition.' If a prospective purchaser so requests, the
8 information shall be transmitted to him prior to payment
9 or the placing of an order for a multiple. If payment is
10 made by a purchaser prior to delivery of such an art
11 multiple, this information shall be supplied at the time
12 of or prior to delivery, in which case the purchaser is
13 entitled to a refund if, for reasons related to matter
14 contained in such information, he returns the multiple
15 substantially in the condition in which received, within
16 30 days of receiving it. In addition, if, after payment
17 and delivery, it is ascertained that the information
18 provided is incorrect, the purchaser may be entitled to
19 certain remedies."

20 This requirement is not applicable to general written material
21 or advertising which does not constitute an offer to effect a
22 specific sale.

23 (c) Posting of notice.--In each place of business in the
24 state where an art merchant is regularly engaged in sales of
25 multiples, the art merchant shall post in a conspicuous place, a
26 sign which, in a legible format, contains the information
27 included in the following passage:

28 "The act of (P.L. , No.), known as
29 the Art Law provides for disclosure in writing of certain
30 information concerning prints, photographs and sculpture.

1 This information is available to you in accordance with
2 that law."

3 Section 4. Information required.

4 The following information shall be supplied, as indicated, as
5 to each multiple produced:

6 (1) Artist.--State the name of the artist.

7 (2) Signature.--If the artist's name appears on the
8 multiple, state whether the multiple was signed by the
9 artist. If not signed by the artist, then state the source of
10 the artist's name on the multiple, such as whether the artist
11 placed his signature on the master, whether his name was
12 stamped or estate stamped on the multiple, or was from some
13 other source or in some other manner placed on the multiple.

14 (3) Medium or process.--

15 (i) Describe the medium or process, and where
16 pertinent to photographic processes the material, used in
17 producing the multiple, such as whether the multiple was
18 produced through etching, engraving, lithographic,
19 serigraphic or a particular method and material used in
20 the photographic developing processes. If an established
21 term, in accordance with the usage of the trade, cannot
22 be employed accurately to describe the medium or process,
23 a brief, clear description shall be made.

24 (ii) If the purported artist was deceased at the
25 time the master was made which produced the multiple,
26 this shall be stated.

27 (iii) If the multiple or the image on or in the
28 master constitutes a mechanical, photomechanical,
29 handmade or photographic type of reproduction, or is a
30 reproduction, of an image produced in a different medium,

1 for a purpose other than the creation of the multiple
2 being described, this information and the respective
3 mediums shall be stated.

4 (iv) If subparagraph (iii) is applicable and the
5 multiple is not signed, state whether the artist
6 authorized or approved in writing the multiple or the
7 edition of which the multiple being described is one.

8 (4) Use of master.--

9 (i) If the multiple is a "posthumous" multiple, that
10 is, if the master was created during the life of the
11 artist but the multiple was produced after the artist's
12 death, this shall be stated.

13 (ii) If the multiple was made from a master which
14 produced a prior limited edition or from a master which
15 constitutes or was made from a reproduction of a prior
16 multiple or of a master which produced prior multiples,
17 this shall be stated.

18 (5) Time produced.--As to multiples produced during or
19 after 1950, state the year or approximate year the multiple
20 was produced. As to multiples produced prior to 1950, state
21 the year, approximate year or period when the master was made
22 which produced the multiple or when the particular multiple
23 being described was produced. The requirements of this
24 paragraph shall be satisfied when the year stated is
25 approximately accurate.

26 (6) Size of the edition.--

27 (i) If the multiple being described is offered as
28 one of a limited edition, this shall be so stated, as
29 well as the number of multiples in the edition, and
30 whether and how the multiple is numbered.

1 (ii) Unless otherwise disclosed, the number of
2 multiples stated under subparagraph (i) shall constitute
3 an express warranty, as defined in section 7, that no
4 additional numbered multiples of the same image,
5 exclusive of proofs, have been produced.

6 (iii) The number of multiples stated under
7 subparagraph (i) shall also constitute an express
8 warranty, as defined in section 7, that no additional
9 multiples of the same image, whether designated "proofs"
10 other than trial proofs, numbered or otherwise, have been
11 produced in an amount which exceeds the number in the
12 limited edition by 20 or 20%, whichever is greater.

13 (iv) If the number of multiples exceeds the number
14 in the stated limited edition as provided in subparagraph
15 (iii), then state the number of proofs other than trial
16 proofs, or other numbered or unnumbered multiples, in the
17 same or other prior editions, produced from the same
18 master as described in paragraph (4)(ii), and whether and
19 how they are signed and numbered.

20 Section 5. Information required for multiples produced during
21 certain periods.

22 (a) January 1, 1950, to effective date of act.--The
23 information which shall be supplied as to each multiple produced
24 during the period from January 1, 1950, to the effective date of
25 this act shall consist of the information required by section 4
26 except for section 4(3)(iv), (4)(ii) and (6)(iii) and (iv).

27 (b) January 1, 1900, to December 31, 1949.--The information
28 which shall be supplied as to each multiple produced during the
29 period from January 1, 1900, to December 31, 1949, shall consist
30 of the information required by section 4 except for section

1 4(3)(ii), (iii) and (iv), (4) and (6).

2 (c) Prior to 1900.--The information which shall be supplied
3 as to each multiple produced prior to 1900 shall consist of the
4 information required by section 4 except for section 4(2),
5 (3)(ii), (iii) and (iv), (4) and (6).

6 Section 6. Information required for sculptures.

7 (a) General rule.--The following information shall be
8 supplied as indicated in a written instrument as to each
9 multiple produced, fabricated or carved, on or after the
10 effective date of this act:

11 (1) Artist.--State the name of the artist.

12 (2) Title.--State the title of the sculpture.

13 (3) Foundry.--State the name, if known, of the foundry
14 which or person who produced, fabricated or carved the
15 sculpture.

16 (4) Medium.--Describe the medium or process used in
17 producing the multiple. If an established term, in accordance
18 with the usage of the trade, cannot be employed accurately to
19 describe the medium or process, a brief, clear description
20 shall be made.

21 (5) Dimensions.--State the dimensions of the sculpture.

22 (6) Time produced.--State the year the sculpture was
23 cast, fabricated or carved.

24 (7) Number cast.--State the number of sculpture casts,
25 according to the best information available, produced or
26 fabricated or carved as of the date of the sale.

27 (8) Artist deceased.--If the purported artist was
28 deceased at the time the sculpture was produced, this shall
29 be stated.

30 (9) Use of master.--State whether the sculpture is

1 authorized by the artist or, if produced after the artist's
2 death, whether it was authorized in writing by the artist or
3 by the estate, heirs or other legal representatives of the
4 artist. In the event of a sale after the initial sale, the
5 art merchant may disclose in writing evidence of such
6 reasonable inquiries as have been made under section 9(b) and
7 any information imparted as may be relevant in fulfilling the
8 intent of this paragraph.

9 (b) Limited edition sculpture.--For limited edition
10 sculpture produced on or after the effective date of this act,
11 in addition to the information required to be provided under
12 subsection (a), the following items of information shall also be
13 provided to the purchaser in a written instrument:

14 (1) Whether and how the sculpture and the edition is
15 numbered.

16 (2) The size of the edition or proposed edition and the
17 size of any prior edition or editions of the same sculpture,
18 regardless of the color or material used.

19 (3) Whether additional sculpture casts have been
20 produced in excess of the stated size of the edition or
21 proposed edition and, if so, the total number of such excess
22 casts produced or proposed to be produced and whether and how
23 they are or will be numbered according to the stated
24 intention of the artist or a statement that the artist has
25 not disclosed his intention about the number of additional
26 casts or their numbering. Additional sculpture casts shall
27 include all casts from the same master regardless of their
28 color, material or size.

29 (4) Whether the artist has stated in writing a
30 limitation on the number of additional sculpture casts to be

1 produced in excess of the stated size of the edition or
2 proposed edition and, if so, the total number of such excess
3 casts produced or proposed to be produced and whether and how
4 they are or will be numbered according to the stated
5 intention of the artist or the estate, heirs or other legal
6 representatives of the artist or a statement that the artist
7 has not disclosed his intention about the number of
8 additional casts or their numbering. Additional sculpture
9 casts shall include all casts from the same master regardless
10 of their color, material or size.

11 (c) Certain sculpture copies.--For copies of sculpture not
12 made from the master and produced after the effective date of
13 this act, in addition to the information required to be provided
14 under subsections (a) and (b), the following items of
15 information shall also be provided to the purchaser in a written
16 instrument:

17 (1) The means by which the copy was made.

18 (2) Whether the copy was authorized by the artist or the
19 estate, heirs or other legal representatives of the artist.

20 (3) Whether the copy is of the same material and size as
21 the master.

22 Section 7. Warranty provisions.

23 (a) General rule.--Information provided under this act shall
24 create and express warranty. When information is not supplied
25 because it is not applicable, this shall constitute an express
26 warranty that such required information is not applicable.

27 (b) Express warranties.--Notwithstanding any provision of
28 any other law to the contrary:

29 (1) Whenever an art merchant, in selling or exchanging a
30 work of fine art, furnishes to a buyer of such work who is

1 not an art merchant a certificate of authenticity or any
2 similar written instrument it:

3 (i) shall be presumed to be part of the basis of the
4 bargain; and

5 (ii) shall create an express warranty for the
6 material facts stated as of the date of such sale or
7 exchange.

8 (2) Except as provided in paragraph (4) a warranty shall
9 not be negated or limited provided that, in construing the
10 degree of warranty, due regard shall be given the terminology
11 used and the meaning accorded to that terminology by the
12 customs and usage of the trade at the time and in the
13 locality where the sale or exchange took place.

14 (3) Language used in a certificate of authenticity or
15 similar written instrument stating that:

16 (i) the work is by a named author or has a named
17 authorship, without any limiting words, means
18 unequivocally that the work is by such named author or
19 has such named authorship;

20 (ii) the work is "attributed to a named author"
21 means a work of the period of the author, attributed to
22 him, but not with certainty by him; or

23 (iii) the work is of the "school of a named author"
24 means a work of the period of the author or by a pupil or
25 close follower of the author, but not by the author.

26 (4) (i) An express warranty and disclaimers intended to
27 negate or limit the warranty shall be construed wherever
28 reasonable as consistent with each other but subject to
29 13 Pa.C.S. § 2202 (relating to final written expression:
30 parol or extrinsic evidence), negation or limitation is

1 inoperative to the extent that such construction is
2 unreasonable.

3 (ii) Such negation or limitation shall be deemed
4 unreasonable if:

5 (A) the disclaimer is not conspicuous, written
6 and apart from the warranty, in words which clearly
7 and specifically apprise the buyer that the seller
8 assumes no risk, liability or responsibility for the
9 material facts stated concerning such work of fine
10 art. Words of general disclaimer are not sufficient
11 to negate or limit an express warranty;

12 (B) the work of fine art is proved to be a
13 counterfeit and this was not clearly indicated in the
14 description of the work; or

15 (C) the information provided is proved to be, as
16 of the date of sale or exchange, false, mistaken or
17 erroneous.

18 (c) Penalty for falsifying certificates of authenticity or
19 similar written instrument.--A person who, with intent to
20 defraud, deceive or injure another, makes, utters or issues a
21 certificate of authenticity or any similar written instrument
22 for a work of fine art attesting to material facts which the
23 work does not in fact possess commits a misdemeanor of the third
24 degree.

25 (d) Express warranties for multiples.--

26 (1) When an art merchant furnishes the name of the
27 artist of a multiple, or otherwise furnishes information
28 required by this act for any time period as to transactions,
29 including offers, sales or consignments, the provisions of
30 subsection (b) shall apply except that subsection (b) shall

1 be deemed to include sales to art merchants. The existence of
2 a reasonable basis in fact for information warranted shall
3 not be a defense in an action to enforce that warranty,
4 except in the case of photographs produced prior to 1950, and
5 multiples produced prior to 1900.

6 (2) The provisions of subsection (b)(4) shall apply when
7 an art merchant disclaims knowledge as to a multiple about
8 which information is required by this act, provided that, in
9 addition, such disclaimer shall be ineffective unless
10 clearly, specifically and categorically stated as to each
11 item of information and contained in the physical context of
12 other language setting forth the required information as to a
13 specific multiple.

14 (e) Construction.--

15 (1) The rights and liabilities created by this section
16 shall be construed to be in addition to and not in
17 substitution, exclusion or displacement of other rights and
18 liabilities provided by law, including the law of principal
19 and agent, except where such construction would, as a matter
20 of law, be unreasonable.

21 (2) No art merchant who, as buyer, is excluded from
22 obtaining the benefits of an express warranty under this act
23 shall thereby be deprived of the benefits of any other
24 provision of law.

25 Section 8. Construction of act.

26 (a) General rule.--The rights, liabilities and remedies
27 created by this act shall be construed to be in addition to and
28 not in substitution, exclusion or displacement of other rights,
29 liabilities and remedies provided by law, except where such
30 construction would, as a matter of law, be unreasonable.

1 (b) Incurrence of certain obligations.--Whenever an artist
2 sells or consigns a multiple of his own creation, the artist
3 shall incur the obligations prescribed by this act for an art
4 merchant, but an artist shall not otherwise be regarded as an
5 art merchant.

6 (c) Nonliability to purchaser.--An artist or merchant who
7 consigns a multiple to a merchant for the purpose of effecting a
8 sale of the multiple shall have no liability to a purchaser
9 under this act if such consignor, as to the consignee, has
10 complied with the provisions of this act.

11 (d) Incurrence of merchants' liability.--When a merchant has
12 agreed to sell a multiple on behalf of a consignor, who is not
13 an art merchant, or when an artist has not consigned a multiple
14 to a merchant, but the merchant has agreed to act as the agent
15 for an artist for the purpose of supplying the information
16 required by this act, such merchant shall incur liabilities of
17 other merchants prescribed by this act as to a purchaser.

18 (e) Incorrect information.--When an art merchant or merchant
19 is liable to a purchaser under this act, as a result of
20 providing information in the situations referred to in
21 subsections (a), (b), (c) and (d), as well as when a merchant
22 purchased a multiple from another merchant, if the merchant or
23 art merchant can establish that his liability results from
24 incorrect information which was provided by the consignor,
25 artist or merchant to him in writing, the merchant who is liable
26 in good faith relied on such information, the consignor, artist
27 or merchant shall similarly incur liabilities as to the
28 purchaser and the merchant.

29 Section 9. Remedies and enforcement.

30 (a) Merchant's liability.--An art merchant, including a

1 merchant consignee, who offers or sells a multiple in, into or
2 from this Commonwealth without providing the information
3 required by this act for the appropriate time period, or who
4 provides required information which is mistaken, erroneous or
5 untrue, except for harmless errors such as typographical errors,
6 shall be liable to the purchaser to whom the multiple was sold.
7 The merchant's liability shall consist of the consideration paid
8 by the purchaser with interest from the time of payment at the
9 statutory rate, upon the return of the multiple in substantially
10 the same condition in which received by the purchaser. This
11 remedy shall not bar or be deemed inconsistent with a claim for
12 damages or with the exercise of additional remedies otherwise
13 available to the purchaser.

14 (b) Disclaimer of knowledge.--In any proceeding in which an
15 art merchant relies upon a disclaimer of knowledge as to any
16 relevant information required by this act for the appropriate
17 time period, the disclaimer shall be effective only if it
18 complies with section 8, unless the claimant is able to
19 establish that the merchant failed to make reasonable inquiries,
20 according to the custom and usage of the trade, to ascertain the
21 relevant information or that such relevant information would
22 have been ascertained as a result of such reasonable inquiries.

23 (c) Multiples.--

24 (1) The purchaser of such a multiple may recover from
25 the art merchant an amount equal to three times the amount
26 recoverable under subsection (a) if an art merchant offers,
27 consigns or sells a multiple and:

28 (i) willfully fails to provide the information
29 required by this act for the appropriate time period;

30 (ii) knowingly provides false information; or

1 (iii) the purchaser can establish that the merchant
2 willfully and falsely disclaimed knowledge as to any
3 required information.

4 (2) Pursuant to paragraph (1)(i) and (iii), a merchant
5 may introduce evidence of the relevant usage and custom of
6 the trade in any proceeding in which such treble damages are
7 sought.

8 (d) Costs and expenses.--In any action to enforce any
9 provision of this act, the court may allow the prevailing
10 purchaser the costs of the action, together with reasonable
11 attorney and expert witness fees. In the event, however, the
12 court determines that an action to enforce was brought in bad
13 faith, it may allow such expenses to the art merchant as it
14 deems appropriate.

15 (e) Period of limitations.--Any action to enforce any rights
16 under this act shall be brought within the period prescribed for
17 such actions by 13 Pa.C.S. Div. 2 (relating to sales).

18 Section 10. Enjoining violations.

19 Any violation of this act shall be deemed to be unlawful and
20 a violation of the Consumer Protection Law. The Attorney General
21 may bring an action pursuant to the Consumer Protection Law to
22 enjoin violations of this act and seek restitution for any
23 person so entitled. In any such action or proceeding, the
24 Attorney General may recover, in addition to any other relief
25 provided in the Consumer Protection Law, a civil penalty of not
26 more than \$500 to be forfeited to the Commonwealth. In
27 connection with any proposed action or proceeding, the Attorney
28 General is authorized to gather evidence and make a
29 determination of the relevant facts and to issue subpoenas in
30 accordance with the applicable rules of court.

1 Section 11. Repeals.

2 All acts and parts of acts are repealed insofar as they are
3 inconsistent with this act.

4 Section 12. Effective date.

5 This act shall take effect in 120 days.