

CHAPTER 442. SALES

BULK SALES, TRANSFERS, AND ASSIGNMENTS

Act 223 of 1905

442.1-442.3 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

BULK MORTGAGES

Act 200 of 1929

442.51-442.53 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

CONDITIONAL SALE OF PERSONAL PROPERTY FOR RESALE

Act 64 of 1915

442.101 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

EQUIPMENT INSTALLED IN MORTGAGED OR LAND CONTRACT PROPERTY

Act 154 of 1933

442.151 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

REGULATION OF CERTAIN SALES

Act 319 of 1917

442.201-442.209 Repealed. 1961, Act 39, Eff. Sept. 8, 1961.

REGULATION OF CERTAIN SALES

Act 39 of 1961

AN ACT to regulate insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's removal and closing out sales, and sales of goods, wares and merchandise damaged by fire, smoke, water or otherwise; to provide penalties for the violation hereof; and to repeal certain acts and parts of acts.

History: 1961, Act 39, Eff. Sept. 8, 1961.

The People of the State of Michigan enact:

442.211 Conduct of certain sales; definitions.

Sec. 1. As used in this act:

(a) "Going out of business sale" means any sale, whether described by such name or by any other name such as, but not limited to, "closing out sales", "liquidation sales", "lost our lease sale", "forced to vacate sale", held in such a manner as to indicate a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted.

(b) "Goods" means all goods, wares, merchandise and other personal property, excepting, choses in action and money.

(c) "Person" includes a person, firm, corporation, partnership, association or 2 or more persons having a joint or common interest.

(d) "Removal sale" means any sale held in such a manner as to induce a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted, and thereafter will be moved to and occupy another location.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.212 Conduct of certain sales; license required; application of act.

Sec. 2. No person shall advertise, represent or hold out that any sale of goods is an insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or sale, going out of business or sale of goods damaged by fire, smoke, water or otherwise, unless he first obtains a license to conduct the sale from the clerk of the city, village or township in which he proposes to conduct a sale. This act shall not apply to any sales by a person regularly engaged in insurance or salvage sale of goods, or the sale of goods which have been damaged by fire, smoke, water or otherwise, who acquired the goods for the account of others as a result of fire or other casualty.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.213 Licenses; application, contents.

Sec. 3. Any applicant for a license under this act shall file an application in writing and under oath with the appropriate clerk setting out the following facts and information regarding such a proposed sale:

(a) The name and address of the applicant for the license, who must be the owner of the goods to be sold, and in addition, if the applicant is a partnership, corporation, firm or association, the name and the position of the individual filing such application.

(b) The name and style in which such sale is to be conducted, and the address where the sale is to be conducted.

(c) The dates and period of time during which the sale is to be conducted.

(d) The name and address of the person who will be in charge and responsible for the conduct of the sale.

(e) A full explanation with regard to the condition or necessity which is the occasion for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. If the application is for a license to conduct a going out of business sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the application is for a license to conduct a removal sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the application is for a license to conduct a sale of goods damaged by fire, smoke, water or otherwise, it shall also contain a statement as to the time, location and cause of the damage.

(f) A full, detailed and complete inventory of the goods that are to be sold, which inventory shall:

(1) Itemize the goods to be sold and contain sufficient information concerning each item, including make and brand name, if any, to clearly identify it.

(2) List separately any goods which were purchased during a 60-day period immediately prior to the date of making application for the license.

(3) Show the cost price of each item in the inventory together with the name and address of the seller of the items to the applicant, the date of the purchase, the date of the delivery of each item to the applicant and the total value of the inventory at cost.

(4) In no case exceed 200% of the total value of merchandise upon which personal property tax was paid by the applicant or his predecessor as evidenced by a copy of the last personal property tax receipt issued.

(g) A statement that no goods will be added to the inventory after the application is made or during the sale and that the inventory contains no goods received on consignment.

History: 1961, Act 39, Eff. Sept. 8, 1961;—Am. 1963, Act 219, Eff. Sept. 6, 1963.

442.214 Licenses; issuance, restrictions.

Sec. 4. (1) The clerk, upon receipt of an application giving fully and completely the information under oath as required by section 3 and upon receipt of the fee provided for in section 6, may issue a license to the applicant, authorizing the applicant to advertise, represent, and sell the particular goods so inventoried at the time and place stated in the application and in true accordance with the provisions of this act. The license shall be issued in duplicate and shall bear a number and date of its expiration. A license issued under this act shall be granted and valid only for the sale of the inventoried goods which are the property of the licensee. The license shall apply only to the premises specified in the application, and it may not be transferred or assigned. If a licensee under this act is engaged in business in other locations, advertising or offering of goods on behalf of such location shall not represent or imply any participation in or cooperation with the sale on the premises specified in the license, nor shall any advertising or other offering of goods on behalf of the premises where the licensed sale is being conducted represent or imply any participation in or cooperation with such sale at other locations. No license under this act shall be issued to any person:

(a) To conduct a sale in the trade name or style of a person in whose goods the applicant for the license has acquired a right or title thereto within 6 months prior to the time of making application for such a license.

(b) To continue a sale in the name of a licensee under this act in whose goods such person acquired a right or title while such a sale is in progress.

(c) To conduct a sale, other than an insurance sale, a salvage sale or a sale of damaged goods, on the same premises within 1 year from the conclusion of a prior sale of the nature covered by this act.

(2) Subdivisions (a), (b) and (c) shall not apply to any person who has acquired a right, title or interest in goods as an heir, devisee or legatee or pursuant to an order or process of a court of competent jurisdiction.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.215 Conduct of certain sales; conditions.

Sec. 5. No person shall advertise or otherwise to represent, for sale, or sell, any goods as a bankruptcy, executor's, administrator's, receiver's, or trustee's sales, except pursuant to, and in compliance with, federal or state statutory authority or judicial process, or as an assignee's or insolvent sale except where there is a bona fide assignment for the benefit of creditors.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.216 Licenses; terms, renewal, fee.

Sec. 6. (1) A license to conduct a sale issued under this act shall not be issued or valid for a period of more than 30 days from the start of the sale, and the sale may be conducted only during the period set forth in the license.

(2) A license to conduct a sale issued under this act may be renewed not more than twice, for a period not to exceed 30 days for each renewal. A person requesting a renewal under this subsection must provide an affidavit of the licensee that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this act, by purchase, acquisition on consignment, or otherwise. The application for renewal of the license shall be made not more than 13 days before the time of the expiration of the license and shall contain a new inventory of goods remaining on hand at the time the application for renewal is made, prepared and furnished in the same manner and form as the original inventory. A renewal shall not be granted if any goods have been added to the stock listed in the inventory since the date of the issuance of the license.

(3) A fee of \$50.00 shall accompany an application for the license and for the renewal of a license, unless the clerk of the city, village, or township receiving the application waives that fee.

History: 1961, Act 39, Eff. Sept. 8, 1961;—Am. 1963, Act 219, Eff. Sept. 6, 1963;—Am. 2007, Act 65, Imd. Eff. Sept. 28, 2007.

442.217 Licenses; application, inventory, posting; advertisement, announcement; contents.

Sec. 7. A copy of the application for a license to conduct a sale under this act, including the inventory filed herewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold, so that the public may be informed of the facts relating to the goods before purchasing same, but the copy need not show the purchase price of the goods. The duplicate copy of a license shall be attached to the front door of the premises where the sale is conducted in such a manner that it be clearly visible from the street. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of license and the date of its expiration.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.218 Licenses; application, clerk's records.

Sec. 8. Every city, village or township clerk to whom application is made, shall indorse upon the application the date of its filing, shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in the application in a book kept for that purpose, properly indexed, containing the name of the person asking such license, the nature of the proposed sale, the place where the sale is to be conducted, its duration, the inventory of the goods to be sold and a general statement as to where the same came from and shall make in the book a notation as to the issuance or refusal of the license applied for together with the date of the same. The clerk shall indorse on the application the date the license is granted or refused, and the application and abstract shall be prima facie evidence of all statements therein contained.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.219 Licenses; false statement, penalty.

Sec. 9. Any person making a false statement in the application provided for in this act is guilty of perjury and shall be imprisoned in the state prison for not more than 5 years.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.220 Licenses; scope; goods, removal; effect.

Sec. 10. The license as provided for in section 2 of this act shall be valid only for a sale of the goods inventoried and described in the application for such license, in the manner and at the time and place set forth in the application. Any removal of the goods so inventoried and described in the application from the place of sale mentioned in the application shall cause the goods to lose their identity as an insurance, bankrupt, mortgaged, insolvent's, assignee's, executor's, administrator's, receiver's or trustee's stock of goods or a stock of goods being removed or closed out, or a stock of goods damaged by fire, smoke or water, or otherwise, and no license shall be issued for the conducting of a sale of any of such goods removed from the place described in the application, under the provisions of this act, at any other place or places.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.221 Conduct of sales; purchase of goods prior to sale prohibited; evidence.

Sec. 11. No person in contemplation of conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall order any goods for the purpose of selling and disposing of the same at such sale. Any unusual purchase and additions to the stock of goods within 60 days prior to the filing of the application for license to conduct the sale shall be presumptive evidence that the purchases and additions to stock were made in contemplation of the sale and for the purpose of selling the same at the sale.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.222 Conduct of sales; addition of goods during sale, false description or inventory prohibited.

Sec. 12. No person carrying on or conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall add, during the continuance of the sale, any goods to the stock of goods described and inventoried in his original application for the license. No goods shall be sold at or during the sale, excepting the goods described and inventoried in the original application. Every addition of goods to the stock of goods described and inventoried in the application and each sale of goods not inventoried and described in the application, shall constitute a separate offense under this act, and shall void any license issued to conduct a sale under this act.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.223 Advertisement before compliance with act, penalty.

Sec. 13. Any person who advertises, represents or holds out any sale of goods to be an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrators, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, water, smoke or otherwise, without having first complied with the provisions of this act, is guilty of a misdemeanor and shall be fined in a sum not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.224 Violation of act; misdemeanor, penalty.

Sec. 14. Any person who holds, conducts, or carries on any sale of goods as an insurance, bankrupt, mortgage, insolvent's, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water, or otherwise, contrary to the provisions of this act, or who violates any of the provisions of this act is guilty of a misdemeanor, and shall be fined in a sum of not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.225 Persons exempt from act.

Sec. 15. The provisions of this act shall not apply to sheriffs, constables, or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

History: 1961, Act 39, Eff. Sept. 8, 1961.

442.226 Repeal.

Sec. 16. Act No. 319 of the Public Acts of 1917, as amended, being sections 442.201 to 442.209 of the Compiled Laws of 1948, is hereby repealed.

History: 1961, Act 39, Eff. Sept. 8, 1961.

**SALE OF COLLATERAL
Act 84 of 1899**

442.301-442.303 Repealed. 1962, Act 174, Eff. Jan. 1, 1964.

SALES OF FINE ART Act 90 of 1970

AN ACT relating to the relationship between artists, art consignors, and art dealers; regulating certain consignment sales; establishing trust property and trust funds; limiting waivers of rights; and requiring certain receipts.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

442.311 Definitions.

Sec. 1. As used in this act:

(a) “Art dealer” means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(b) “Artist” means the creator of a work of fine art or, if the creator is deceased, the creator's heirs or personal representatives.

(c) “Bona fide purchaser” means a person who in good faith makes a purchase without notice of any outstanding rights of others.

(d) “Commission” means the fee, compensation, or percentage of actual selling price of a work of fine art, agreed upon by the artist and art dealer, which the art dealer may retain after sale of the artist's work of fine art to a third party.

(e) “Consignor” means a person who delivers or causes to be delivered a work of fine art to an art dealer on consignment.

(f) “Fine art” means an original art or craft work which is:

(i) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, video tape, or photograph.

(ii) A work of calligraphy.

(iii) A work of graphic art including, but not limited to, an etching, lithograph, offset print, or silk screen.

(iv) A craft work in materials including, but not limited to, clay, textile, fiber, wood, metal, plastic, glass, stone, or leather.

(v) A work in mixed media including, but not limited to, a collage or a work consisting of any combination of subparagraphs (i) to (iv).

(g) “On consignment” means that no title to or estate in the fine art or right to possession of the fine art superior to that of the consignor vests in the consignee, except that the consignee has the power or authority to transfer and convey, to a third person, all of the right, title, and interest of the consignor, in and to the fine art.

(h) “Person” means an individual, partnership, corporation, association, or other group, however organized.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.312 Consignment; trust property; trust funds; claims, liens, or security interest.

Sec. 2. Any custom, practice, or usage of the trade to the contrary notwithstanding:

(a) When an artist or other person delivers or causes to be delivered a work of fine art to an art dealer for the purpose of sale on a commission, the delivery to and acceptance of the work of fine art by the art dealer is considered to be on consignment and the art dealer shall thereafter, with respect to the work of fine art, be considered to be the consignee of the work of fine art.

(b) The work of fine art is trust property in the hands of the consignee for the benefit of the consignor.

(c) Any proceeds due the artist or other consignor from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor.

(d) A work of fine art initially received on consignment shall be considered to remain trust property notwithstanding the subsequent purchase of the work of fine art by the consignee directly or indirectly for the consignee's own account until the terms of purchase are completed. If the work is thereafter resold to a third party who is a bona fide purchaser before the consignor has been paid in full, the work of fine art ceases to be trust property and the proceeds of the resale are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor. The trusteeship relating to proceeds of the resale shall continue until the fiduciary obligation of the consignee with respect to a transaction is discharged in full.

(e) Property or funds which are trust property or trust funds pursuant to this section are not subject to the claims, liens, or security interest of the creditors of the art dealer, notwithstanding any other section of this act.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.312a Written receipt as condition to commission on consignment; contents; effect of prior contract.

Sec. 2a. (1) An art dealer may accept a work of fine art for a commission on consignment only if before or at the time of acceptance the art dealer delivers to the consignor a written receipt describing the works of fine art delivered to the art dealer and the consignment nature of the delivery.

(2) Except as provided in this subsection, this section applies to a work of fine art accepted on consignment on and after the effective date of this section. If a work of fine art is accepted under a contract in existence before the effective date of this section, this section is applicable to that work of fine art, the proceeds of sale from that work of fine art, and the art dealers involved in the transaction, only to the extent that the provisions of this act do not conflict with that contract.

History: Add. 1982, Act 396, Eff. Mar. 30, 1983.

442.313 Repealed. 1982, Act 396, Eff. Mar. 30, 1983.

Compiler's note: The repealed section pertained to waiver of provisions of act.

442.314 Effect of act as to existing contracts or arrangements.

Sec. 4. This act does not affect any written or oral contract or arrangement in existence before January 1, 1971, nor to any extensions or renewals of a contract except by the mutual written consent of the parties.

History: 1970, Act 90, Eff. Jan. 1, 1971;—Am. 1982, Act 396, Eff. Mar. 30, 1983.

442.315 Effective date of act.

Sec. 5. This act shall take effect on January 1, 1971.

History: 1970, Act 90, Eff. Jan. 1, 1971.

SALES OF FINE ART Act 121 of 1970

AN ACT to provide for the creation and negation of express warranties in the sales of works of fine art.

History: 1970, Act 121, Eff. Jan. 1, 1971.

The People of the State of Michigan enact:

442.321 Art sales warranties; definitions.

Sec. 1. As used in this act:

(a) "Art merchant" means a person who deals in works of fine art or by his occupation holds himself out as having knowledge or skill peculiar to works of fine art or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. It includes an auctioneer who sells works of fine art at public auction as well as the auctioneer's consignor or principal.

(b) "Author" or "authorship" refers to the creator of a work of fine art or to the period, culture, source or origin with which the creation of the work is identified in the description of the work.

(c) "Counterfeit" means a work of fine art made or altered, with intent to deceive, in a manner that it appears to have an authorship which it does not in fact possess. It includes any work of fine art made, altered or copied in a manner that it appears to have an authorship which it does not in fact possess even though the work may not have been made with intent to deceive.

(d) "Fine art" means a painting, sculpture, drawing or work of graphic art.

(e) "Person" means an individual, partnership, corporation, association or other group however organized.

(f) "Written instrument" means a written or printed agreement, bill of sale, or any other written or printed note or memorandum of the sale or exchange of a work of fine art by an art merchant and includes a written or printed catalog or other prospectus of a forthcoming sale as well as any written or printed corrections or amendments thereof.

History: 1970, Act 121, Eff. Jan. 1, 1971.

442.322 Warranties by art merchant; written instrument; effect of furnishing name of artist; negation or limitation of warranty; construing degree of authenticity of authorship.

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

(a) If an art merchant, in selling or exchanging a work of fine art, furnishes to a buyer of the work who is not an art merchant, a written instrument which, in describing the work, identifies it with an author or authorship, the description is presumed to be part of the basis of the bargain and creates an express warranty of the authenticity of the authorship as of the date of the sale or exchange. However, if an art merchant furnishes the name of an artist pursuant to section 7 or 8 of the art multiples sales act, the art merchant for purposes of that information is bound by this section, whether or not the purchaser is an art merchant. The warranty is not negated or limited because the art merchant in the written instrument did not use formal words such as "warrant" or "guarantee", because he or she did not have a specific intention or authorization to make a warranty, or because any statement relevant to authorship is, or purports to be, or is capable of being merely the art merchant's opinion.

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

(i) That the work is by a named author or has a named authorship, without any other limiting words, means, unequivocally, that the work is by the named author or has the named authorship.

(ii) That the work is attributed to a named author means a work of the period of the author, attributed to the author, but not with certainty by the named author.

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

History: 1970, Act 121, Eff. Jan. 1, 1971;—Am. 1987, Act 54, Eff. Dec. 9, 1987.

442.323 Language; construction.

Sec. 3. Words relevant to the creation of an express warranty of authenticity of authorship of a work of fine art and words tending to negate or limit warranty shall be construed where reasonable as consistent with each

other; but subject to the provisions of section 2202 of Act No. 174 of the Public Acts of 1962, being section 440.2202 of the Compiled Laws of 1948, on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable. Subject to the limitations hereinafter set forth, the construction shall be deemed unreasonable in any of the following cases:

(a) The language tending to negate or limit the warranty is not conspicuous, written and contained in a provision, separate and apart from any language relevant to the creation of the warranty, in words which would clearly and specifically apprise the buyer that the seller assumes no risk, liability or responsibility for the authenticity of the authorship of a work of fine art. Words of general disclaimer like "all warranties, express or implied, are excluded" are not sufficient to negate or limit an express warranty of authenticity of the authorship of a work of fine art, created under section 2 or otherwise.

(b) The work of fine art is proved to be a counterfeit, and this was not clearly indicated in the description of the work.

(c) The work of fine art is unqualifiedly stated to be the work of a named author or authorship and it is proved that, as of the date of sale or exchange, the statement was false, mistaken or erroneous.

History: 1970, Act 121, Eff. Jan. 1, 1971.

442.324 Additional rights and liabilities created; rights of art merchant as buyer; liability of art merchant making good faith warranty; applicability of art multiples sales act.

Sec. 4. (1) The rights and liabilities created by this act are in addition to and not in substitution, exclusion, or displacement of other rights and liabilities provided by law, including the law of principal and agent, except where the construction would, as a matter of law, be unreasonable.

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

(3) An art merchant whose warranty of authenticity of authorship was made in good faith shall not be liable for damages beyond the return of the purchase price which the art merchant received.

(4) This act shall not apply, and the art multiples sales act shall apply, to a right, liability, or obligation prescribed by the art multiples sales act, except as provided by that act.

History: 1970, Act 121, Eff. Jan. 1, 1971;—Am. 1987, Act 54, Eff. Dec. 9, 1987.

442.325 Effective date.

Sec. 5. This act shall take effect on January 1, 1971.

History: 1970, Act 121, Eff. Jan. 1, 1971.

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.