

HOUSE BILL 29

Introduced by Brooke

12/23	Introduced
12/30	Referred to Business & Economic Development
1/04	First Reading
1/07	Hearing
1/13	Hearing
1/13	Tabled in Committee

HOUSE BILL NO. 29
INTRODUCED BY BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OF WORKS OF FINE ART OR SIGNED REPRODUCTIONS WITHOUT WRITTEN DISCLOSURE OF PERTINENT INFORMATION; CREATING AN EXPRESS WARRANTY RESPECTING INFORMATION DISCLOSED; PROVIDING CIVIL REMEDIES FOR VIOLATIONS; AND AMENDING SECTIONS 22-2-501 AND 22-2-503, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 22-2-501, MCA, is amended to read:

"22-2-501. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "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.

(2) "Artist" means a person who creates a work of fine art or, if the person is deceased, the person's heir, devisee, or personal representative.

(3) "Consignment" means that no title to, estate in, or right to possession of fine art superior to that of the consignor vests in the consignee, notwithstanding the

consignee's power or authority to transfer and convey to a third person all of the right, title, and interest of the consignor in and to such the fine art.

(4) "Edition" means a number of impressions made from a print matrix during a single run, as nearly identical as the printing process allows, and designated either by number or by documentation as an edition.

(5) "Fine art" means a painting, sculpture, drawing, weaving, work of graphic art (including an etching, lithograph, signed--limited--edition offset print, silk screen, or a work of graphic art of like nature), a work of calligraphy, ~~photographs~~ photograph, original ~~works~~ work in ceramics, wood, ~~metals~~ metal, glass, plastic, wax, stone, or leather, or a work in mixed media (including a collage, assemblage, or any combination of the art media mentioned in this subsection).

(6) "Impression" means an image made from a matrix by printing, stamping, casting, or other process commonly used in the production of works of art.

(7) "Limited" means a designation of a specific number of impressions released for public consumption, limited either by a decision of the artist or publisher or by the inherent nature of the process by which the fine art is created. In that case, the words "limited issue" or "limited release" must be used in disclosure. A limited issue or

1 limited release may or may not be a limited edition.

2 (8) "Matrix" means:

3 (a) the plate, stone, screen, film, block, or other
4 material on which an artist creates an original image and
5 from which an original print is produced; or

6 (b) the original cast from which a three-dimensional
7 multiple is produced.

8 (9) "Multiple" means an original, three-dimensional
9 work of fine art produced by a process of casting, such as
10 the lost-wax process. Multiples result from an artist's
11 intention to produce more than one object in the casting
12 process.

13 (10) "Original print" means an image conceived and
14 completed by the artist, with or without the assistance of
15 craftspersons, using the inherent aesthetic qualities of
16 etching, lithography, woodcutting, wood engraving,
17 serigraphy, photography, or other graphic art process.

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

20 (12) "Proof" means an impression made by a process
21 commonly used in the graphic arts for examination,
22 correction, or special designation, including a state proof,
23 printer's proof, and artist's proof.

24 (13) "Reproduction" means a copy, facsimile, replica, or
25 imitation of a previously produced work of art.

1 (14) "Signed reproduction" means a reproduction
2 autographed by the artist signifying examination and
3 approval by the artist."

4 **NEW SECTION. Section 2. Exceptions.** [Sections 2
5 through 5] do not apply to fine art:

6 (1) sold prior to October 1, 1993; or

7 (2) that is clearly and conspicuously designated as a
8 reproduction and that is not alleged to be signed, numbered,
9 or limited.

10 **NEW SECTION. Section 3. Disclosure required.** (1) A
11 work of fine art or a signed reproduction may not be offered
12 for sale in this state by an artist or art dealer, by
13 catalog, prospectus, circular, or otherwise, unless the
14 offerer discloses in writing the following information:

15 (a) the name of the artist;

16 (b) a full description of the medium in which the work
17 of fine art is rendered;

18 (c) if the artist's name appears on an impression,
19 whether:

20 (i) the impression was signed by the artist;

21 (ii) the artist's signature was signed in the image
22 matrix and printed with the impression; or

23 (iii) the artist's name was placed on the impression in
24 another manner;

25 (d) an accurate description of the process or medium

1 and materials used in production. Descriptions must use
 2 established terms and definitions that comply with those
 3 commonly used in the literature of the field of fine art. If
 4 those terms cannot provide an accurate description, a
 5 narrative providing a brief, clear description must be
 6 furnished.

7 (e) if an impression is produced by photomechanical or
 8 other type of photographic reproduction of a work of fine
 9 art created and produced in another medium, a description of
 10 the impression as a printed reproduction;

11 (f) if an impression is unsigned, a written statement
 12 of whether the artist approved or authorized the edition or
 13 impression;

14 (g) if the edition or impression is a restrike or
 15 posthumous impression made after the artist is deceased or
 16 if the matrix has been reworked, a statement of that fact;

17 (h) whether any prior editions or impressions were
 18 produced, including numbers;

19 (i) the date of production;

20 (j) the name of the publisher, if applicable;

21 (k) whether an edition is offered as a limited edition
 22 and, if so:

23 (i) the authorized maximum number of signed or numbered
 24 impressions, or both, in the edition;

25 (ii) the authorized maximum number of unsigned or

1 unnumbered impressions, or both, in the edition;

2 (iii) the authorized maximum number of artist's,
 3 publisher's, or other proofs, if any, outside the regular
 4 edition;

5 (iv) the total size of the edition; and

6 (v) whether the matrix has been destroyed, altered,
 7 defaced, or canceled after printing; and

8 (1) if the fine art is on the secondary market, a
 9 statement or documentation of any conservation treatments
 10 and the name of the conservator or conservation
 11 organization.

12 (2) If an artist or art dealer lacks knowledge of any
 13 relevant detail referred to in this section and in the
 14 exercise of reasonable diligence cannot obtain that
 15 knowledge, the artist or art dealer shall provide a
 16 statement to that effect so that a potential purchaser can
 17 judge the degree of uniqueness or scarcity of the fine art.
 18 Designating an impression or three-dimensional object as a
 19 reproduction eliminates the need to furnish further
 20 informational details unless the impression or
 21 three-dimensional object was published in a signed,
 22 numbered, or limited edition, in which case all
 23 informational details must be furnished.

24 NEW SECTION. **Section 4. Express warranty.** (1) When an
 25 artist or art dealer furnishes the information required by

[sections 2 through 5] or furnishes additional information, that information forms a portion of the basis of a bargain and creates an express warranty as to the truth of the information. A warranty is not negated or limited:

(a) by the absence of words such as "warranty" or "guarantee";

(b) because an artist or art dealer did not have a specific intention or authorization to make a warranty; or

(c) because any required statement is or purports to be the art dealer's opinion.

(2) If an expert opinion is a basis for the required documentation, the name and address of the expert providing the opinion must be stated. If documentation is the result of an appraisal by a qualified art appraiser, the name and address of the appraiser must be stated.

(3) All expert opinions and appraisals used in the sale of fine art must be provided to the buyer in writing.

NEW SECTION. Section 5. Civil remedy for violations.

(1) An artist or art dealer who sells a work of fine art or a signed reproduction in violation of [sections 2 through 5] is liable to the purchaser in the amount of the consideration paid by the purchaser, with interest in the amount provided in 27-1-210, upon return of the item sold in the condition in which it was received by the purchaser.

(2) An artist or art dealer who willfully sells a work

of fine art or a signed reproduction in violation of [sections 2 through 5] is liable to the purchaser in an amount equal to three times the amount of the consideration paid by the purchaser plus the purchaser's costs, including reasonable attorney fees.

Section 6. Section 22-2-503, MCA, is amended to read:

"22-2-503. Agency relationship -- trust property. A consignment of a work of fine art results in the following:

(1) The art dealer, after delivery of the work of fine art, is an agent of the artist for the purpose of sale or exhibition of the consigned work of fine art within the state of Montana. This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art.

(2) The work of fine art constitutes property held in trust by the consignee for the benefit of the consignor and is not subject to claim by a creditor of the consignee.

(3) The consignee is responsible for the loss of or damage to the work of fine art while in the possession of or on the premises of the consignee.

(4) The proceeds from the sale of the work of fine art constitute funds held in trust by the consignee for the benefit of the consignor. The proceeds must first be applied

1 to pay any balance due to the consignor, unless the
2 consignor expressly agrees otherwise in writing.

3 (5) An artist or merchant who consigns a work of fine
4 art to an art dealer is not liable to the purchaser
5 regarding disclosure under [sections 2 through 5] if the
6 consignee has complied with the provisions of [sections 2
7 through 5]."

8 NEW SECTION. **Section 7.** Codification instruction.
9 [Sections 2 through 5] are intended to be codified as an
10 integral part of Title 22, chapter 2, part 5, and the
11 provisions of Title 22, chapter 2, part 5, apply to
12 [sections 2 through 5].

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