

JUDICIARY: Varn, Chair; Gentleman and Horn

*Small Business 4/1/87*  
*D. Pass 4/10 (p. 1266)*

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SENATE FILE 428  
BY VARN

Passed Senate, Date 3-30-87 (p. 976) Passed House, Date 4-14-87 (p. 1316)  
Vote: Ayes 47 Nays 0 Vote: Ayes 91 Nays 2  
Approved April 27, 1987 (p. 1541)

A BILL FOR

1 An Act relating to the protection of buyers of fine art and  
2 providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 428

1 Section 1. NEW SECTION. 715A.1 DEFINITIONS.

2 As used in this chapter:

3 1. "Artist" means the creator of a work of fine art or, in  
4 the case of multiples, the person who conceived or created the  
5 image which is contained in or which constitutes the master  
6 from which the individual print was made.

7 2. "Art merchant" means a person who is in the business of  
8 dealing, exclusively or nonexclusively, in works of fine art  
9 or multiples, or a person who by the person's occupation  
10 claims or impliedly claims to have knowledge or skill peculiar  
11 to such works, or to whom such knowledge or skill may be  
12 attributed by the person's employment of an agent or other  
13 intermediary who by occupation claims or impliedly claims to  
14 have such knowledge or skill. The term "art merchant"  
15 includes an auctioneer who sells such works at public auction,  
16 and except for multiples, includes persons not otherwise  
17 defined or treated as art merchants in this chapter who are  
18 consignors or principals of auctioneers.

19 3. "Author" or "authorship" refers to the creator of a  
20 work of fine art or multiple or to the period, culture,  
21 source, or origin, as the case may be, with which the creation  
22 of the work is identified in the description of the work.

23 4. "Counterfeit" means a work of fine art or multiple  
24 made, altered, or copied, with or without intent to deceive,  
25 in such a manner that it appears or is claimed to have an  
26 authorship which it does not in fact possess.

27 5. "Certificate of authenticity" means a written statement  
28 by an art merchant confirming, approving, or attesting to the  
29 authorship of a work of fine art or multiple, which is capable  
30 of being used to the advantage or disadvantage of some person.

31 6. "Fine art" means a painting, sculpture, drawing, work  
32 of graphic art, or print, but not multiples.

33 7. "Limited edition" means works of art produced from a  
34 master, all of which are the same image and bear numbers or  
35 other markings to denote a limited production to a stated

1 maximum number of multiples, or which are otherwise held out  
2 as limited to a maximum number of multiples.

3 8. "Master" includes a printing plate, stone, block,  
4 screen, photographic negative, or other like material which  
5 contains an image used to produce visual art objects in  
6 multiples.

7 9. "Print" means a multiple produced by, but not limited  
8 to, such processes as engraving, etching, woodcutting,  
9 lithography, and serigraphy, multiple produced or developed  
10 from a photographic negative, or a multiple produced or  
11 developed by any combination such processes.

12 10. "Proof" means a multiple which is the same as, and  
13 which is produced from the same master as the multiples in a  
14 limited edition, but which, whether so designated or not, is  
15 set aside from and is in addition to the limited edition to  
16 which it relates.

17 11. "Signed" means autographed by the artist's own hand,  
18 and not by mechanical means of reproduction, and if a  
19 multiple, after the multiple was produced, whether or not the  
20 master was signed.

21 12. "Visual art multiple" or "multiple" means a print,  
22 photograph, positive or negative, or similar art object pro-  
23 duced in more than one copy and sold, offered for sale, or  
24 consigned in, into, or from this state for an amount in excess  
25 of one hundred dollars exclusive of any frame. The term  
26 includes a page or sheet taken from a book or magazine and  
27 offered for sale or sold as a visual art object, but excludes  
28 a book or magazine.

29 13. "Written instrument" means a written or printed  
30 agreement, bill of sale, invoice, certificate of authenticity,  
31 catalogue, or any other written or printed note, memorandum,  
32 or label describing the work of fine art or multiple which is  
33 to be sold, exchanged, or consigned by an art merchant.

34 Sec. 2. NEW SECTION. 715A.2 EXPRESS WARRANTIES.

35 1. If an art merchant sells or exchanges a work of fine

1 art or multiple and furnishes to a buyer of the work who is  
2 not an art merchant a certificate of authenticity or any  
3 similar written instrument presumed to be part of the basis of  
4 the bargain, the art merchant creates an express warranty for  
5 the material facts stated as of the date of the sale or  
6 exchange.

7 2. Except as provided in subsection 4, an express warranty  
8 shall not be negated or limited; however, in construing the  
9 degree of warranty, due regard shall be given the terminology  
10 used and the meaning accorded the terminology by the customs  
11 and usage of the trade at the time and in the locality where  
12 the sale or exchange took place.

13 3. Language used in a certificate of authenticity or  
14 similar written instrument, stating that:

15 a. The work is by a named author or has a named author-  
16 ship, without any limiting words, means unequivocally, that  
17 the work is by such named author or has such named authorship.

18 b. The work is "attributed to a named author" means a work  
19 of the period of the author, attributed to the author, but not  
20 with certainty by the author.

21 c. The work is of the "school of a named author" means a  
22 work of the period of the author, by a pupil or close follower  
23 of the author, but not by the author.

24 4. An express warranty and any disclaimer intended to  
25 negate or limit the warranty shall be construed wherever  
26 reasonable as consistent with each other but subject to the  
27 provisions of section 554.2202 on parol and extrinsic  
28 evidence. However, the negation or limitation is inoperative  
29 to the extent that the negation or limitation is unreasonable  
30 or that such construction is unreasonable. A negation or  
31 limitation is unreasonable if:

32 a. The disclaimer is not conspicuous, written, and apart  
33 from the warranty, in words which clearly and specifically in-  
34 form the buyer that the seller assumes no risk, liability, or  
35 responsibility for the material facts stated concerning the

1 work of fine art. Words of general disclaimer are not suf-  
2 ficient to negate or limit an express warranty.

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

5 c. The information provided is proved to be, as of the  
6 date of sale or exchange, false, mistaken, or erroneous.

7 5. This section shall apply to an art merchant selling or  
8 exchanging a multiple who furnishes the buyer with the name of  
9 the artist and any other information including, but not  
10 limited to, whether the multiple is a limited edition, a  
11 proof, or signed. The warranty provided under this subsection  
12 shall include sales to buyers who are art merchants.

13 Sec. 3. NEW SECTION. 715A.3 FALSIFYING CERTIFICATES OF  
14 AUTHENTICITY OR FALSE REPRESENTATION -- PENALTY.

15 A person who makes, alters, or issues a certificate of  
16 authenticity or any similar written instrument for a work of  
17 fine art or multiple attesting to material facts about the  
18 work which are not true, or who makes representations  
19 regarding a work of fine art or a multiple attesting to  
20 material facts about the work which are not true, with intent  
21 to defraud, deceive, or injure another is guilty, upon  
22 conviction, of an aggravated misdemeanor.

23 Sec. 4. NEW SECTION. 715A.4 REMEDIES TO BUYER.

24 1. An art merchant who sells a work of fine art or a  
25 multiple to a buyer under a warranty attesting to facts about  
26 the work which are not true is liable to the buyer to whom the  
27 work was sold.

28 a. If the warranty was untrue through no fault of the art  
29 merchant, the merchant's liability is the consideration paid  
30 by the buyer upon return of the work in substantially the same  
31 condition in which it was received by the buyer.

32 b. If the warranty is untrue and the buyer is able to  
33 establish that the art merchant failed to make reasonable  
34 inquiries according to the custom and the usage of the trade  
35 to confirm the warranted facts about the work, or that the

1 warranted facts would have been found to be untrue if  
2 reasonable inquiries had been made, the merchant's liability  
3 is the consideration paid by the buyer with interest from the  
4 time of the payment at the rate prescribed by section 535.3  
5 upon the return of the work in substantially the same  
6 condition in which it was received by the buyer.

7 c. If the warranty is untrue and the buyer is able to  
8 establish that the art merchant knowingly provided false  
9 information on the warranty or willfully and falsely  
10 disclaimed knowledge of information relating to the warranty,  
11 the merchant is liable to the buyer in an amount equal to  
12 three times the amount provided in paragraph "b".

13 This remedy shall not bar or be deemed inconsistent with a  
14 claim for damages or with the exercise of additional remedies  
15 otherwise available to the buyer.

16 2. In an action to enforce this section, the court may  
17 allow a prevailing buyer the costs of the action together with  
18 reasonable attorneys' and expert witnesses' fees. If the  
19 court determines that an action to enforce this section was  
20 brought in bad faith, the court may allow those expenses to  
21 the art merchant that it deems appropriate.

22 3. An action to enforce any liability under this section  
23 shall be brought within the time period prescribed for such  
24 actions under section 614.1.

25 EXPLANATION

26 This bill provides that an art merchant selling or exchanging  
27 a work of fine art or a multiple (prints, photographs, and  
28 other art objects produced in more than one copy) to a buyer  
29 who is not an art merchant, who furnishes a certificate of  
30 authenticity or a similar writing or makes representations as  
31 to the authenticity of a multiple, creates a warranty of  
32 authenticity on the work. If the warranty is untrue through  
33 no fault of the art merchant, the merchant is liable to the  
34 buyer for the amount paid. If the warranty is untrue because  
35 the merchant did not make reasonable inquiries into the truth

1 of the warranty, the merchant is liable for the amount paid by  
2 the buyer plus interest from the date of payment. If the  
3 warranty is untrue because the art merchant knowingly provided  
4 false information, the merchant is liable for three times the  
5 cost paid by the buyer plus interest.

6 A person who issues a certificate of authenticity or who  
7 makes representations attesting to material facts regarding a  
8 work of fine art or a multiple which are untrue with intent to  
9 defraud, deceive, or injure another commits an aggravated  
10 misdemeanor.

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SENATE FILE 428

AN ACT

RELATING TO THE PROTECTION OF BUYERS OF FINE ART AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 715A.1 DEFINITIONS.

As used in this chapter:

1. "Artist" means the creator of a work of fine art or, in the case of multiples, the person who conceived or created the image which is contained in or which constitutes the master from which the individual print was made.

2. "Art merchant" means a person who is in the business of dealing, exclusively or nonexclusively, in works of fine art or multiples, or a person who by the person's occupation claims or impliedly claims to have knowledge or skill peculiar to such works, or to whom such knowledge or skill may be attributed by the person's employment of an agent or other intermediary who by occupation claims or impliedly claims to have such knowledge or skill. The term "art merchant" includes an auctioneer who sells such works at public auction, and except for multiples, includes persons not otherwise defined or treated as art merchants in this chapter who are consignors or principals of auctioneers.

3. "Author" or "authorship" refers to the creator of a work of fine art or multiple or to the period, culture,

source, or origin, as the case may be, with which the creation of the work is identified in the description of the work.

4. "Counterfeit" means a work of fine art or multiple made, altered, or copied, with or without intent to deceive, in such a manner that it appears or is claimed to have an authorship which it does not in fact possess.

5. "Certificate of authenticity" means a written statement by an art merchant confirming, approving, or attesting to the authorship of a work of fine art or multiple, which is capable of being used to the advantage or disadvantage of some person.

6. "Fine art" means a painting, sculpture, drawing, work of graphic art, or print, but not multiples.

7. "Limited edition" means works of art produced from a master, all of which are the same image and bear numbers or other markings to denote a limited production to a stated maximum number of multiples, or which are otherwise held out as limited to a maximum number of multiples.

8. "Master" includes a printing plate, stone, block, screen, photographic negative, or other like material which contains an image used to produce visual art objects in multiples.

9. "Print" means a multiple produced by, but not limited to, such processes as engraving, etching, woodcutting, lithography, and serigraphy, multiple produced or developed from a photographic negative, or a multiple produced or developed by any combination such processes.

10. "Proof" means a multiple which is the same as, and which is produced from the same master as the multiples in a limited edition, but which, whether so designated or not, is set aside from and is in addition to the limited edition to which it relates.

11. "Signed" means autographed by the artist's own hand, and not by mechanical means of reproduction, and if a multiple, after the multiple was produced, whether or not the master was signed.

12. "Visual art multiple" or "multiple" means a print, photograph, positive or negative, or similar art object produced in more than one copy and sold, offered for sale, or consigned in, into, or from this state for an amount in excess of one hundred dollars exclusive of any frame. The term includes a page or sheet taken from a book or magazine and offered for sale or sold as a visual art object, but excludes a book or magazine.

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

Sec. 2. NEW SECTION. 715A.2 EXPRESS WARRANTIES.

1. If an art merchant sells or exchanges a work of fine art or multiple and furnishes to a buyer of the work who is not an art merchant a certificate of authenticity or any similar written instrument presumed to be part of the basis of the bargain, the art merchant creates an express warranty for the material facts stated as of the date of the sale or exchange.

2. Except as provided in subsection 4, an express warranty shall not be negated or limited; however, in construing the degree of warranty, due regard shall be given the terminology used and the meaning accorded the terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place.

3. Language used in a certificate of authenticity or similar written instrument, stating that:

a. The work is by a named author or has a named authorship, without any limiting words, means unequivocally, that the work is by such named author or has such named authorship.

b. 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 author.

c. 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.

4. An express warranty and any disclaimer intended to negate or limit the warranty shall be construed wherever reasonable as consistent with each other but subject to the provisions of section 554.2202 on parol and extrinsic evidence. However, the negation or limitation is inoperative to the extent that the negation or limitation is unreasonable or that such construction is unreasonable. A negation or limitation is unreasonable if:

a. The disclaimer is not conspicuous, written, and apart from the warranty, in words which clearly and specifically inform the buyer that the seller assumes no risk, liability, or responsibility for the material facts stated concerning the work of fine art. Words of general disclaimer are not sufficient to negate or limit an express warranty.

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 information provided is proved to be, as of the date of sale or exchange, false, mistaken, or erroneous.

5. This section shall apply to an art merchant selling or exchanging a multiple who furnishes the buyer with the name of the artist and any other information including, but not limited to, whether the multiple is a limited edition, a proof, or signed. The warranty provided under this subsection shall include sales to buyers who are art merchants.

Sec. 3. NEW SECTION. 715A.3 FALSIFYING CERTIFICATES OF AUTHENTICITY OR FALSE REPRESENTATION -- PENALTY.

A person who makes, alters, or issues a certificate of authenticity or any similar written instrument for a work of fine art or multiple attesting to material facts about the work which are not true, or who makes representations regarding a work of fine art or a multiple attesting to material facts about the work which are not true, with intent

to defraud, deceive, or injure another is guilty, upon conviction, of an aggravated misdemeanor.

Sec. 4. NEW SECTION. 715A.4 REMEDIES TO BUYER.

1. An art merchant who sells a work of fine art or a multiple to a buyer under a warranty attesting to facts about the work which are not true is liable to the buyer to whom the work was sold.

a. If the warranty was untrue through no fault of the art merchant, the merchant's liability is the consideration paid by the buyer upon return of the work in substantially the same condition in which it was received by the buyer.

b. If the warranty is untrue and the buyer is able to establish that the art merchant failed to make reasonable inquiries according to the custom and the usage of the trade to confirm the warranted facts about the work, or that the warranted facts would have been found to be untrue if reasonable inquiries had been made, the merchant's liability is the consideration paid by the buyer with interest from the time of the payment at the rate prescribed by section 535.3 upon the return of the work in substantially the same condition in which it was received by the buyer.

c. If the warranty is untrue and the buyer is able to establish that the art merchant knowingly provided false information on the warranty or willfully and falsely disclaimed knowledge of information relating to the warranty, the merchant is liable to the buyer in an amount equal to three times the amount provided in paragraph "b".

This remedy shall not bar or be deemed inconsistent with a claim for damages or with the exercise of additional remedies otherwise available to the buyer.

2. In an action to enforce this section, the court may allow a prevailing buyer the costs of the action together with reasonable attorneys' and expert witnesses' fees. If the court determines that an action to enforce this section was brought in bad faith, the court may allow those expenses to the art merchant that it deems appropriate.

3. An action to enforce any liability under this section shall be brought within the time period prescribed for such actions under section 614.1.

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JO ANN ZIMMERMAN  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 428, Seventy-second General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved April 27, 1987

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TERRY E. BRANSTAD  
Governor

S.F. 428