

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 526

Short Title: Fine Print Sales.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary I.

March 20, 1989

A BILL TO BE ENTITLED
AN ACT TO REGULATE THE SALE OF FINE PRINTS AS RECOMMENDED BY
THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 25C of the General Statutes reads as rewritten:

"CHAPTER 25C.

"ARTWORK ON CONSIGNMENT. SALES OF ARTWORK.

"ARTICLE 1.

"ARTWORK ON CONSIGNMENT.

"§ 25C-1. Definitions.

As used in this ~~Chapter~~ Article unless the context clearly requires otherwise:

- (1) 'Art dealer' means an individual, partnership, firm, association, or corporation that undertakes to sell a work of fine art created by someone else;
- (2) 'Artist' means the creator of a work of fine art;
- (3) 'On consignment' means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer; and
- (4) 'Work of fine art' means an original art work that is:
 - a. A visual rendition, including a painting, drawing, sculpture, mosaic, or photograph;
 - b. A work of calligraphy;
 - c. A work of graphic art, including an etching, lithograph, offset print, or silk screen;

- 1 d. A craft work in materials, including clay, textile, fiber, wood,
2 metal, plastic, or glass; or
3 e. A work in mixed media, including a collage or a work
4 consisting of any combination of works included in this
5 subdivision.

6 **"§ 25C-2. Interest of art dealer who accepts works of fine art on consignment.**

7 If an art dealer accepts a work of fine art on a fee, commission, or other
8 compensation basis on consignment from the artist:

- 9 (1) The art dealer is, with respect to that work of fine art, the bailee of the
10 artist;
11 (2) The work of fine art is bailment property in which the art dealer has no
12 legal or equitable interest until the work is sold to a bona fide third
13 party; and
14 (3) The proceeds of the sale of the work of fine art are bailment property
15 in which the art dealer has no legal or equitable interest until the
16 amount due the artist from the sale, minus the agreed commission, is
17 paid.

18 **"§ 25C-3. Status of works of fine art subsequently purchased by art dealer for his
19 own account.**

20 Notwithstanding the subsequent purchase of a work of fine art by the art dealer
21 directly or indirectly for the art dealer's own account, a work of fine art that is bailment
22 property when initially accepted by the art dealer remains bailment property until the
23 purchase price minus the agreed upon commission, is paid in full to the artist.

24 **"§ 25C-4. Creditors of art dealer may not reach works of fine art on consignment
25 with art dealer.**

26 Property that is bailment property under this ~~Chapter~~ Article is not subject to the
27 claims, liens, or security interests of the creditors of an art dealer.

28 **"§ 25C-5. Risk of loss; insurable interest.**

29 Nothing in this ~~Chapter~~ Article shall affect any provision of law pertaining to the risk
30 of loss between or among the parties to a consignment agreement under this ~~Chapter~~
31 Article or pertaining to the insurable interest of any such party.

32 **"ARTICLE 2.**

33 **"SALE OF PRINTS.**

34 **"§ 25C-10. Definitions.**

35 As used in this Article, the term:

36 (a) 'Artist' means any person who created or who conceived of and approved:

- 37 (1) The master image of a work of art for a print, including but not limited
38 to a photograph or a negative; or
39 (2) The master image of a work of art which served as the model for a
40 print.

41 (b) 'Art dealer' means a person:

- 42 (1) Who is in the business of dealing in prints to which this Article
43 applies; or

- 1 (2) Who holds himself out as having knowledge or skills particular to
2 prints to which this Article applies; or
- 3 (3) Who employs an agent or other intermediary who holds himself out as
4 having knowledge or skills particular to prints to which this Article
5 applies; or
- 6 (4) Who is a professional auctioneer who sells prints to which this Article
7 applies, at auctions.
- 8 (c) 'Fine print' means a printed image on paper or any other suitable substance
9 which is based on an artist's master image and has been taken off a plate by printing,
10 stamping, casting, or any other process commonly used in the graphic arts, and includes
11 but is not limited to engraving, etching, woodcut, lithograph, or serigraph, or a print
12 developed or created from a negative when such negative is itself an original work of
13 art.
- 14 (d) 'Person' means an individual, partnership, corporation, association, joint
15 venture, or any other legal or commercial entity.
- 16 (e) 'Plate' means a plate, stone, block, or other material used to create a fine print
17 or from which a fine print is taken.
- 18 (f) 'Print' means a fine print or reproduction as defined in this Article.
- 19 (g) 'Photograph' means the image produced upon a photosensitive surface by the
20 chemical action of light.
- 21 (h) 'Negative' means any negative image, photographic plate, slide, or other
22 material created by the artist and used for the purpose of creating the print.
- 23 (i) 'Reproduction' means a copy of a fine print or other work of art made by a
24 commercial mechanical process which does not require the use of an original plate or an
25 original negative.
- 26 (j) 'Signed print' means a finished fine print autographed by the artist and not by
27 mechanical means of reproduction, whether or not it was signed or unsigned in the
28 plate.
- 29 (k) 'Work of art' means an original art work that is:
- 30 (1) A visual rendition, including a painting, drawing, sculpture, mosaic, or
31 photograph;
- 32 (2) A work of calligraphy;
- 33 (3) A work of graphic art, including but not limited to a fine print;
- 34 (4) A craft work in materials, including clay, textile, fiber, wood, metal,
35 plastic, or glass; or
- 36 (5) A work in mixed media, including a collage or a work consisting of
37 any combination of works included in this subdivision.

38 **"§ 25C-11. General prohibitions.**

- 39 (a) An art dealer may not publish in or distribute in, into or from, this State any
40 catalog, prospectus, circular, advertisement or other publication which solicits a direct
41 sale, by inviting transmittal of payment for a specific print not exempt under G.S. 25C-
42 16, unless it clearly sets forth, in close physical proximity to the place in such
43 publication describing the print, all information required by G.S. 25C-14. This

1 requirement does not apply to general written material or advertising that does not
2 solicit such a direct sale.

3 (b) An art dealer may not sell or invite offers to buy any print not exempt under
4 G.S. 25C-16, either at retail or wholesale, unless the art dealer clearly and
5 conspicuously discloses in writing to prospective purchasers, all information required
6 by G.S. 25C-14. At public or private auction, an art dealer may not invite offers to buy
7 any non-exempt print unless the art dealer clearly and conspicuously discloses in
8 writing such required information to prospective bidders before any offer is made and
9 until an offer is accepted.

10 **"§ 25C-12. Sale by artist; consignments.**

11 (a) The disclosure requirements of this Article do not apply to a sale of a print by
12 the artist who produced the print, directly to a purchaser, without the intervention of a
13 wholesale or retail merchant, unless the artist is an art dealer within the definition of
14 G.S. 25C-10(b)(1) or unless the artist consigns a print of his own creation.

15 (b) An artist or art dealer who consigns a print to an art dealer for the purpose of
16 effecting a sale of such print shall have no liability to a purchaser under this Article if
17 such consignor, as to the consignee, has complied with the disclosure requirements of
18 this Article.

19 **"§ 25C-13. Warranties.**

20 (a) Whenever an art dealer discloses information as required by G.S. 25C-11,
21 such information shall be a part of the basis of the bargain and shall create express
22 warranties as to the information so provided.

23 (b) When information is not disclosed as required by G.S. 25C-11, such
24 nondisclosure shall constitute an express warranty that such information is not required
25 to be disclosed.

26 (c) Evidence of a warranty made in accordance with this Article shall be **prima**
27 **facie** evidence of reliance upon the warranty.

28 **"§ 25C-14. Disclosure requirements.**

29 (a) An art dealer who sells or offers to sell a print not exempt under G.S. 25C-16,
30 shall disclose the following information in a writing to the prospective purchaser:

- 31 (1) The name of the artist;
- 32 (2) The year the plate or negative was created;
- 33 (3) The year when the print was printed or created;
- 34 (4) The process used to create the master image;
- 35 (5) The process used to create the print;
- 36 (6) Whether the print is part of a limited edition.

37 (b) If the print or its plate or negative is a mechanical, photomechanical or
38 photographic copy or reproduction of a master image previously created or produced in
39 another medium, this information shall be disclosed as part of the disclosure required by
40 subsection (a) of this section.

41 (c) If the print is represented to be part of a limited edition, the disclosure
42 required by subsections (a) and (b) of this section shall further state:

- 43 (1) The authorized maximum number of numbered or signed prints, or
44 both, in the edition;

- 1 (2) The authorized maximum number of unnumbered or unsigned prints,
2 or both, in the edition;
- 3 (3) Any authorized maximum number of artist's, publisher's, printer's, or
4 other proofs, exclusive of trial proofs, outside the regular edition;
- 5 (4) The total number of prints, either numbered or unnumbered, in the
6 edition;
- 7 (5) Whether the plate or negative has been destroyed, effaced, altered,
8 defaced, or cancelled after the current edition;
- 9 (6) If there were any prior plates or negatives of the same master image,
10 the total number of plates or negatives and a designation of the plate or
11 negative from which the print was taken;
- 12 (7) If there were any prior or later editions from the same plate or
13 negative, the series number of the edition of which the print is a part,
14 and the aggregate size of all other editions;
- 15 (8) Whether the print was published as a book illustration or in a magazine
16 article;
- 17 (9) Whether the edition is a posthumous edition or a restrike, and, if it is,
18 whether the plate has been reworked;
- 19 (10) The name of any workshop where the edition was printed; and
20 (11) Whether the print has been printed on acid-free paper.

21 (d) Whenever an art dealer disclaims knowledge as to a particular item about
22 which information is required, such disclaimer shall be clearly and conspicuously stated
23 in unqualified terms as to each of those items of information required by this section
24 and shall be contained in writing in the physical context of other language setting forth
25 the required information to be disclosed under this section.

26 **"§ 25C-15. Rights and liabilities not inclusive.**

27 (a) An art dealer who sells a print in violation of this Article shall be liable to the
28 purchaser of the print; the purchaser shall be entitled to recover of the art dealer the
29 consideration paid by the purchaser for the print, with interest at the legal rate thereon,
30 upon the tender of the print in substantially the same condition in which it was received
31 by the purchaser.

32 (b) If an art dealer liable to a purchaser under the provisions of subsection (a) of
33 this section wrongfully refuses to repay the purchaser's consideration as specified
34 therein, the purchaser who prevails in a civil action to recover such consideration may
35 also recover all expenses incurred in connection with the action, including a reasonable
36 attorney's fee.

37 (c) A willful violation of this Article shall constitute a **prima facie** violation of
38 G.S. 75-1.1.

39 (d) The rights and liabilities created by this Article shall be construed to be in
40 addition to and not in substitution, exclusion, or displacement of other rights and
41 liabilities provided by law.

42 **"§ 25C-16. Exemptions.**

1 (a) This Article shall not apply to any print when offered for sale or sold at
2 wholesale or retail for one hundred dollars (\$100.00) or less, exclusive of the value of
3 any frame.

4 (b) This Article shall not apply to any print described clearly and conspicuously
5 in writing by the seller as a 'reproduction and not a fine print', unless the print is said or
6 represented to be one in a limited edition, an edition of numbered or signed prints, or
7 any combination thereof.

8 (c) This Article shall not apply to the sale of any print sold before January 1,
9 1990."

10 Sec. 2. This act shall become effective January 1, 1990.