

ACT 194

H.B. NO. 2117-86

A Bill for an Act Relating to Sale of Fine Prints.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 481F, Hawaii Revised Statutes, is repealed.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SALE OF PRINTS**

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Artist” means the person who created the image upon the master or created the image which served as a model for the image which appears on the master.

“Edition” means the aggregate of prints produced from a single master.

“Hors de Commerce” or words of similar import means prints in the edition which are so designated by the artist or printer with the intent of withholding the prints from sale in commerce at the time the edition is produced.

“Limited edition” means print multiples produced from a master, all of which include the same image and bear numbers or other markings to denote the limited production thereof to a stated maximum number of prints, or are otherwise held out as limited to a maximum number of prints.

“Master” is used in lieu of and has the same meaning as a printing plate, stone, block, screen, or similar matrix which contains an image used to produce a print multiple.

“Print multiple” or “print” means any print produced in more than one copy by means of engraving, etching, woodcutting, lithography, serigraphy, or other similar processes or any combination thereof.

“Proof” means a print in an edition which contains substantially the same image and which is produced from the same master as the prints in the related limited edition, but is set aside from and is in addition to the limited edition, whether or not it is designated as a proof.

“Seller of print multiples” or “seller” means a person who is in the business of selling, exclusively or non-exclusively, print multiples, or a person offering prints for sale who by the person’s occupation holds the person’s self out

as having knowledge or skill peculiar to these works, or to whom that knowledge or skill may be attributed by the employment of an agent or other intermediary who by occupation represents as having that knowledge or skill. The term "seller of print multiples" includes an auctioneer who sells such works at public auction.

"Signed" means the artist signed the print multiple by hand to signify the artist's examination and approval of the print. "Signed" does not mean the act of leaving an impression of the artist's name upon the print by any mechanical process.

"Written instrument" means a written agreement, certificate of authenticity, catalogue, prospectus, advertisement, circular or any other written memorandum describing a print offered for sale by the seller.

§ -2 Exemptions. This chapter shall not apply to print multiples which do not purport to be signed, numbered, approved by the artist, or to comprise a limited edition.

§ -3 Prohibited acts. (a) Any written instrument which solicits a direct sale of print multiples in, into, or from this State published or distributed by any seller of print multiples shall clearly and conspicuously disclose the informational detail required by section -4. This requirement is not applicable to general written material or advertising which does not constitute an offer to effect a specific sale.

(b) If the seller who publishes or distributes a written instrument which solicits a direct sale of prints in, into, or from this State disclaims knowledge as to any informational detail required by section -4, the seller shall so state specifically and categorically with regard to each such detail to the end that the purchaser is enabled to judge the degree of uniqueness or scarcity of the prints offered for sale.

(c) No print multiple shall be offered for sale or sold in, into, or from this State by any seller, at wholesale or retail, unless the seller furnishes the purchaser a written instrument which clearly and conspicuously discloses the informational detail required by section -4 prior to receiving any payment from the purchaser.

(d) If the seller of print multiples disclaims knowledge as to any informational detail required by section -4, the seller shall so state specifically and categorically with regard to each such detail to the end that the purchaser is enabled to judge the degree of uniqueness or scarcity of the prints.

(e) A seller of print multiples may sell or offer to sell prints described in section -2 without furnishing the informational details required by section -4, unless the prints purport to be signed, numbered, approved by the artist, or to comprise a limited edition, in which case all of the informational details required by section -4 shall be furnished.

§ -4 Informational detail. The following informational details shall be disclosed:

- (1) The name of the artist and the artist's participation in creating the print as follows:
 - (A) The name of the artist;
 - (B) Whether or not the image upon the master exists in another medium and if so, state which medium;
 - (C) Name the person, persons or workshop who created the image upon the master;
 - (D) Whether or not the artist approved the master itself or the proofs therefrom;

- (E) Whether or not the artist approved the techniques utilized in the production of the print; and
- (F) Whether or not the artist approved the print.
- (2) Signature. If the name of the artist appears on the print, state whether the print was signed by the artist to signify approval of the print. If the print was not signed by the artist, state the manner in which the artist's name was placed on the print.
- (3) The year in which the print was produced.
- (4) A description of the medium or process such as whether the print was produced by means of etching, engraving, woodcutting, lithography, serigraphy, or other similar processes. If an established term, in accordance with the usage of the trade, cannot be employed accurately to describe the medium or process, a brief, clear description of the medium or process shall be given.
- (5) Whether the edition is being offered as limited edition, and if so:
 - (A) The authorized number of signed or numbered prints, or other, in the edition;
 - (B) The authorized number of unsigned or unnumbered prints, or both, in the edition;
 - (C) The authorized number of proofs, if any, in the edition;
 - (D) The authorized number of prints designated "Hors de Commerce" or by words of similar import; and
 - (E) The total size of the edition.
- (6) Whether or not the master has been destroyed, effaced, altered, defaced, or canceled after producing the edition.
- (7) If there were any prior prints of the same image which were produced by a different process or media or utilized different colors or color schemes, the total number of such prints and an explanation of the difference in process, media, color, or color scheme.
- (8) If there were any prior or later editions produced from the same master, the series number or designation of the subject edition and the total size of all other editions.
- (9) Whether the edition is a posthumous edition or restrike and, if so, whether the master was reworked. If the edition is a restrike, state that restrike is a print multiple made from the master after the edition is produced.
- (10) The name of the printer or workshop, if any, where the edition was produced.

§ -5 Express warranties. (a) Notwithstanding any provision in any other law to the contrary, whenever the seller of print multiples furnishes a purchaser informational details required by section -4, such information shall be presumed to be part of the basis of the bargain and shall create an express warranty as to the information furnished.

(b) The express warranty shall not be negated or limited because the seller did not have a specific intention or authorization to make a warranty or because any information furnished to the purchaser purports to be merely the seller's opinion.

(c) The existence of a factual basis for the information furnished to the purchaser shall not be a defense against the purchaser in an action to enforce the express warranty.

§ -6 Sign required. In each place of business in the State where a seller of print multiples is regularly engaged in the sale of prints, the seller shall post a conspicuous sign in a location reasonably calculated to bring the sign to the attention of purchasers. The sign shall contain the following passage in a legible format: "Hawaii law requires written disclosure of specific information concerning print multiples. This information is intended to assist you in judging the degree of uniqueness or scarcity of the prints and in understanding the means by which the prints were created. The seller will furnish the written disclosure to you at your request or in any event before purchase."

§ -7 Action for damages by purchasers. (a) For information required by section -4, any seller of print multiples who fails to disclose such information or discloses false information shall be liable to the purchaser of the print in an amount equal to the purchase price of the print plus the interest accrued from the date of purchase at the rate provided for in section 478-2.

(b) For information required by section -4, any seller of print multiples who intentionally fails to disclose or intentionally discloses false information shall be liable to the purchaser of the print in the amount of \$1,000 or in an amount equal to three times the purchase price of the print, whichever is greater, plus the interest accrued from the date of purchase at the rate provided for in section 478-2.

(c) No action shall be maintained under this section unless the purchaser of the print tenders the print in the condition in which received by the purchaser to the seller for a refund and the seller fails to refund the full purchase price of the print plus the interest accrued from the date of purchase at the rate provided for in section 478-2.

§ -8 Action for injunction and civil penalties. (a) Civil actions to enjoin violations of this chapter may be prosecuted in circuit court by the attorney general, the office of consumer protection, any county prosecuting attorney, or any person acting in the person's own interest, or in the interest of the members of a corporation or association, or in the interest of the general public.

(b) Any seller of print multiples who violates section -7(a) may be liable for a civil penalty of not less than \$500 nor more than \$2500 for each violation, or any seller of print multiples who violates section -7(b) may be liable for a civil penalty of not less than \$500 nor more than \$10,000 for each violation, which may be recovered in a civil action prosecuted by the attorney general, the office of consumer protection, or any county prosecuting attorney.

(c) In civil actions brought under this section by the attorney general, the office of consumer protection, or any county prosecuting attorney, the court may include in its orders or judgments such provisions as may be necessary to effect restitution in accordance with section 487-14.

(d) Any action to enforce a cause of action arising under this chapter shall be barred unless commenced within one year after discovery of the violation upon which it is based and in no event more than three years after the print was sold.

§ -9 Construction. The rights, liabilities, and remedies created by this chapter shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights, liabilities, remedies provided by law."

SECTION 3. This Act shall take effect on July 1, 1986.

(Approved May 19, 1986.)