

1 SENATE BILL 78

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO AUCTIONS; REQUIRING DISCLOSURES AND PERMITTING
12 INSPECTIONS WITH RESPECT TO AUCTIONS OF FINE ART; PROVIDING FOR
13 ATTORNEY GENERAL ENFORCEMENT; PRESCRIBING PENALTIES.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. [NEW MATERIAL] REGULATION OF FINE ART

17 AUCTIONS.--

18 A. Prior to an auction of fine art, the auction
19 house shall permit prospective purchasers to inspect each lot
20 of fine art to be offered for sale at auction.

21 B. An auction house engaged in the sale of fine art
22 at auction shall disclose in connection with any description of
23 the lot contained in the auction catalogue or in other printed
24 material:

25 (1) any interest of the auction house, direct

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1 or indirect, in the lot, including a guaranteed minimum, other
2 than the selling commission; and

3 (2) the existence and amount of any reserve to
4 which the lot is subject.

5 C. Where printed material is not provided in
6 connection with the auction, an auction house shall identify in
7 writing:

8 (1) any lot of fine art in which the auction
9 house has an interest; and

10 (2) the existence and amount of any reserve to
11 which the lot is subject.

12 D. The identification required by Subsection C of
13 this section shall be made available to prospective purchasers
14 during the required inspection period.

15 E. Immediately before the auction of fine art, the
16 auctioneer shall orally announce that the lots of fine art in
17 which the auction house has an interest have been disclosed in
18 the auction catalogue or other printed material or have been
19 disclosed in the manner prescribed by Subsection C of this
20 section.

21 F. The requirements of this section do not apply
22 to:

23 (1) an auction conducted pursuant to an order
24 of a court of competent jurisdiction, including an order of a
25 bankruptcy judge or trustee; a sale of secured property

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1 pursuant to the Uniform Commercial Code; or the sale of
2 property that is subject to a lien or assignment pursuant to
3 the laws of the state; or

4 (2) an auction conducted as part of a
5 fundraising event by a nonprofit corporation, formally
6 recognized as tax exempt under Section 501(c)(3) of the
7 Internal Revenue Code of 1986, where the proceeds of such
8 fundraising event benefit the nonprofit corporation.

9 G. Whenever the attorney general has reasonable
10 belief that a violation of this section has occurred, the
11 attorney general may bring an action in the name of the state
12 alleging such violation. The action may be brought in the
13 district court of the county in which the auction house resides
14 or in which the auction house's principal place of business is
15 located or in the district court of the county in which the
16 violation occurs.

17 H. In any action filed pursuant to this section,
18 the attorney general may petition the district court for
19 temporary or permanent injunctive relief and restitution.

20 I. The attorney general acting on behalf of the
21 state shall not be required to post bond when seeking a
22 temporary or permanent injunction in such action.

23 J. Whenever the court shall determine that a
24 violation of this section has occurred, the court may impose a
25 civil penalty of not more than one thousand dollars (\$1,000)

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1 for each violation.

2 K. As used in this section:

3 (1) "auction" means a sale, conducted by means
4 of oral or written bids, to the highest bidder;

5 (2) "auction house" means any person,
6 partnership, corporation, association or group engaged for
7 profit primarily in the business of conducting auctions at
8 which it acts as agent for any seller of works of fine art;

9 (3) "fine art" means any original work of
10 visual or graphic art of any media, including any painting,
11 print, drawing, sculpture, craft, object, photograph, hologram
12 or any combination of such media of recognized quality;

13 (4) "guaranteed minimum" means a minimum
14 selling price above which the seller and auction house agree to
15 share any amount in excess;

16 (5) "lot" means an item or group of items that
17 are offered for sale at auction as a single unit; and

18 (6) "reserve" means a fixed price below which
19 a lot will not be sold.