

CHAPTER 163

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 17-1241

BY REPRESENTATIVE(S) Herod, Foote, Lee, Willett, Wist, Buckner, Gray, Hooton, Valdez; also SENATOR(S) Gardner, Cooke, Guzman, Holbert, Kagan, Priola.

AN ACT

CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED TO INDIAN ARTS AND CRAFTS SALES FROM TITLE 12, COLORADO REVISED STATUTES, AS PART OF THE ORGANIZATIONAL RECODIFICATION OF TITLE 12.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add with amended and relocated provisions part 2 to article 15 of title 6 as follows:

PART 2
INDIAN ARTS AND CRAFT SALES

6-15-201. [Formerly 12-44.5-101] Short title. This article shall be known and may be cited as THE SHORT TITLE OF THIS PART 2 IS the "Indian Arts and Crafts Sales Act".

6-15-202. [Formerly 12-44.5-102] Legislative declaration. The purpose of this article PART 2 is to protect the public from false representation in the sale or offering for sale of authentic Indian and other arts and crafts.

6-15-203. [Formerly 12-44.5-103] Definitions. As used in this article PART 2, unless the context otherwise requires:

(1) "Authentic Indian arts and crafts" means any product which THAT is handcrafted by Indian labor or workmanship and is not made from synthetic or artificial materials.

(2) "Findings" means the smaller component parts of a handcrafted item, such as clasps, glass, silver, or synthetic beads, stamped parts not used as a major part of a

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

handcrafted item, leather backings, binding materials, and other ingredient parts not a major part of a handcrafted item.

(3) "Handcrafted" means the production of a product wholly by hand tools, with the exception of buffing or polishing and the findings used upon ~~such~~ THE products.

(4) "Other arts and crafts" means any product ~~which~~ THAT is represented as an Indian design or product but is not handcrafted by Indian labor or workmanship or ~~which~~ THAT is made by machine or from synthetic or artificial materials.

(5) "Imitation turquoise" means any artificial compound or mineral manufactured or treated so as to closely approximate turquoise in composition or color or any other mineral represented as turquoise when in fact it is not.

(6) "Indian" means any person who is enrolled or is a lineal descendent of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe domiciled in the United States or a person recognized by any Indian tribe as being Indian.

(7) "Indian tribe" means any Indian tribe, organized band, or pueblo ~~which~~ THAT is domiciled in the United States.

(8) "Natural" means the status of a mineral component, used in the preparation of authentic Indian arts and crafts, ~~which~~ THAT does not include any chemical alteration or discoloration.

(9) "Plasticized" means the process through which natural turquoise of a soft, porous nature is altered by impregnating it with acrylic resin or any other substance of a similar nature to produce a change in coloration of the turquoise and allow it to accept a polished finish.

(10) "Represented" means the presentation of a product in words, description, state of being, or symbols when ~~said~~ THE product is offered for sale, trade, exchange, or purchase.

(11) "Spin cast" means the casting of jewelry components, other than findings, by means of centrifugal force.

(12) "Stabilized" means the chemical process through which natural turquoise of a soft, porous nature is altered to produce a change in the coloration of the natural mineral.

(13) "Treated" means any chemical process through which a natural turquoise is altered to produce a change in coloration of the natural mineral.

(14) "Turquoise" means a blue, green, greenish-blue, or sky-blue mineral, containing phosphorus, aluminum, copper, and iron, used as a gemstone in its cut and polished form.

(15) "Unnatural" means the status of any mineral compound or substance ~~which~~ THAT is not natural or ~~which~~ THAT has been chemically altered, including a

stabilized, plasticized, or treated mineral and imitation turquoise.

**6-15-204. [Formerly 12-44.5-104] Inquiry as to producer.** (1) It is the duty of every person selling or offering for sale at retail authentic Indian arts and crafts or other arts and crafts to the general public to make due inquiry of their suppliers concerning the methods used in producing ~~such~~ THE arts and crafts and to determine whether ~~such~~ THE arts and crafts are in fact authentic.

(2) It is hereby made the duty of every person selling or offering for sale at retail to the general public natural or unnatural turquoise to make due inquiry of their suppliers concerning the source, grade, and quality of the turquoise for resale.

(3) If the supplier cannot authenticate to the seller the origin and process of manufacture regarding the Indian arts and crafts to be sold or traded to the seller, the seller shall not sell ~~said~~ THE arts and crafts to the general public as authentic Indian arts and crafts.

**6-15-205. [Formerly 12-44.5-105] Unlawful acts.** (1) A person shall not knowingly:

(a) Sell or offer for sale any products represented as authentic Indian arts and crafts unless ~~such~~ THE products are in fact authentic Indian arts and crafts;

(b) Sell or offer to sell any authentic Indian arts and crafts purporting to be silver unless ~~such~~ THE products are made of coin silver or sterling silver ~~which~~ THAT is not less than ninety-percent pure silver by weight or unless ~~said~~ THE person provides a statement to the purchaser at retail concerning the content of the silver used in ~~such~~ THE arts or crafts;

(c) Sell or offer to sell any authentic Indian arts and crafts that are not separately displayed from other arts and crafts and the authentic Indian arts and crafts are not clearly designated with a tag attached to each product and containing the words "Authentic Indian" in letters not less than one-quarter inch high or, if the authentic Indian arts and crafts can clearly be labeled by the use of a display card, then in lieu of tagging each article the person may label the authentic Indian arts and crafts with a printed display card in letters not less than one-half inch in height and containing the words "Authentic Indian". The label or display card shall be maintained with the related crafts in an area separate from other arts and crafts so as to clearly designate the authentic Indian arts and crafts.

(d) Sell or offer to sell spin cast components of authentic Indian jewelry, other than findings, or use spin cast components in authentic Indian jewelry unless ~~such~~ THE jewelry is labeled as being so cast in its manufacture.

**6-15-206. [Formerly 12-44.5-106] Unfair trade practices.** (1) A person shall not:

(a) Use a false or misleading statement, written or oral, or the lack thereof, a visual description or the lack thereof, or any representation or lack thereof made in connection with the sale or trade of Indian arts and crafts in the regular course of trade or commerce with the intent to deceive or mislead any person;

(b) Falsely represent turquoise being sold as having characteristics, elements, or qualities it does not have;

(c) Falsely represent turquoise being sold as natural turquoise if in fact it is in an unnatural state;

(d) Make a false or misleading statement of fact concerning the price or value for the purpose of selling or trading turquoise.

**6-15-207. [Formerly 12-44.5-107] Violations - penalty.** Any person who knowingly violates any of the provisions of ~~section 12-44.5-105 or 12-44.5-106~~ SECTION 6-15-205 OR 6-15-206 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~

**6-15-208. [Formerly 12-44.5-108] Right of action - damages.** In addition to any judicial relief, any person who suffers financial injury or damages by reason of anything forbidden in this ~~article~~ PART 2 may sue in district court and may recover actual damages sustained by him OR HER and the cost of suit, including reasonable ~~attorney's~~ ATTORNEY fees.

**SECTION 2.** In Colorado Revised Statutes, 6-15-101, **amend** the introductory portion as follows:

**6-15-101. Definitions.** As used in this ~~article~~ PART 1, unless the context otherwise requires:

**SECTION 3.** In Colorado Revised Statutes, **amend** 6-15-103 as follows:

**6-15-103. Penalties.** A violation by an art dealer of any of the provisions of this ~~article~~ PART 1 shall render the art dealer liable for damages to the artist in an amount equal to fifty dollars plus the actual damages sustained by the artist, including incidental and consequential damages. In such an action reasonable attorney fees and court costs shall be paid to the prevailing party.

**SECTION 4.** In Colorado Revised Statutes, **amend** 6-15-104 as follows:

**6-15-104. Applicability.** (1) This ~~article~~ PART 1 shall not apply to any contract or arrangement in existence prior to March 25, 1982, nor to any extensions or renewals thereof; except that the parties to ~~such~~ THE contract or arrangement may thereafter elect to be governed by the provisions of this ~~article~~ PART 1.

(2) Any provision, whether oral or written, in or pertaining to the placing of a work of fine art on consignment whereby any provision of this ~~article~~ PART 1 is waived shall be deemed to be against public policy and shall be void.

**SECTION 5.** In Colorado Revised Statutes, 4-2-326, **amend** (4) as follows:

**4-2-326. Sale on approval and sale or return - rights of creditors.** (4) The provisions of this section shall not apply to the placement of works of fine art on consignment, which shall be governed by the provisions of PART 1 OF article 15 of title 6. ~~C.R.S.~~

**SECTION 6. Repeal of relocated provisions in this act.** In Colorado Revised Statutes, **repeal** article 44.5 of title 12.

**SECTION 7. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 28, 2017