

ASSEMBLY BILL

No. 1570

Introduced by Assembly Member Chang

January 4, 2016

An act to amend the heading of Title 1.1A (commencing with Section 1739.7) of Part 4 of Division 3 of, and to amend Section 1739.7 of, the Civil Code, relating to collectibles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, as introduced, Chang. Collectibles: sale of autographed memorabilia.

Existing law regulates the sale or offer to sell by a dealer to a consumer of a collectible in or from this state, as specified. Existing law defines the term “collectible” to mean an autographed sports item, as specified, sold or offered for sale in or from this state by a dealer to a consumer for \$5 or more. Existing law defines a “dealer” as, among other things, a person who is in the business of selling or offering for sale collectibles in or from this state, or a person who by his or her occupation holds himself or herself out as having knowledge or skill peculiar to collectibles.

Existing law provides for the regulation of pawnbrokers and makes it unlawful for a person to engage in the business of a pawnbroker without a license issued by the chief of police, the sheriff, or where appropriate, the police commission.

This bill would instead define the term “collectible” to mean all autographed items, whether or not sports related, as specified, and would make conforming changes to the provisions regulating the sale or offer to sell by a dealer to a consumer of a collectible in this state. The bill

would exclude a pawnbroker licensed pursuant to a specified law from that definition of a dealer under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Title 1.1A (commencing with
2 Section 1739.7) of Part 4 of Division 3 of the Civil Code is
3 amended to read:

4
5 TITLE 1.1A. AUTOGRAPHED-SPORTS MEMORABILIA
6

7 SEC. 2. Section 1739.7 of the Civil Code is amended to read:
8 1739.7. (a) As used in this section:

9 (1) "Autographed" means bearing the actual signature of a
10 personality signed by that individual's own hand.

11 (2) "Collectible" means an autographed ~~sports item, including,~~
12 ~~but not limited to, a photograph, book, ticket, plaque, sports~~
13 ~~program, trading card, item of sports equipment or clothing, or~~
14 ~~other sports memorabilia item~~ sold or offered for sale in or from
15 this state by a dealer to a consumer for five dollars (\$5) or more.

16 (3) "Consumer" means any natural person who purchases a
17 collectible from a dealer for personal, family, or household
18 purposes. "Consumer" also includes a prospective purchaser
19 meeting these criteria.

20 (4) (A) "Dealer" means a person who is in the business of
21 selling or offering for sale collectibles in or from this state,
22 exclusively or nonexclusively, or a person who by his or her
23 occupation holds himself or herself out as having knowledge or
24 skill peculiar to collectibles, or to whom that knowledge or skill
25 may be attributed by his or her employment of an agent or other
26 intermediary that by his or her occupation holds himself or herself
27 out as having that knowledge or skill. "Dealer" includes an
28 auctioneer who sells collectibles at a public auction, and also
29 includes persons who are consignors or representatives or agents
30 of auctioneers. "Dealer" includes a person engaged in a mail order,
31 telephone order, or cable television business for the sale of
32 collectibles.

1 (B) “Dealer” does not include a pawnbroker licensed pursuant
2 to Chapter 3 (commencing with Section 21300) of Division 8 of
3 the Financial Code, if the collectible was acquired through a
4 foreclosure on a collateral loan.

5 (5) “Description” means any of the following:

6 (A) Any representation in writing, including, but not limited to,
7 a representation in an advertisement, brochure, catalog, flyer,
8 invoice, sign, or other commercial or promotional material.

9 (B) Any oral representation.

10 (C) Any representation included in a radio or television
11 broadcast to the public in or from this state.

12 (6) “Limited edition” means any collectible that meets all of
13 the following requirements:

14 (A) A company has produced a specific quantity of a collectible
15 and placed it on the open market.

16 (B) The producer of the collectible has posted a notice, at its
17 primary place of business, that it will provide any consumer, upon
18 request, with a copy of a notice that states the exact number of a
19 collectible produced in that series of limited editions.

20 (C) The producer makes available, upon request of a consumer,
21 evidence that the electronic encoding, films, molds, or plates used
22 to create the collectible have been destroyed after the specified
23 number of collectibles have been produced.

24 (D) The sequence number of the collectible and the number of
25 the total quantity produced in the limited edition are printed on
26 the collectible.

27 (7) “Mint condition” means any collectible sold on the open
28 market or through a private transaction that meets all of the
29 following requirements:

30 (A) The item has never been circulated, used, or worn.

31 (B) The item exhibits little or no sign of aging or degradation
32 caused by oxidation or exposure to sunlight as a result of its
33 display.

34 (C) The item is otherwise free from creases, blemishes, or marks.

35 (8) “Promoter” means a person who arranges, holds, organizes,
36 or presents a trade show featuring collectibles, autograph signings,
37 or both.

38 (9) “Person” means any natural person, partnership, corporation,
39 limited liability company, company, trust, association, or other
40 entity, however organized.

1 (b) Whenever a dealer, in selling or offering to sell to a
2 consumer a collectible in or from this state, provides a description
3 of that collectible as being autographed, the dealer shall furnish a
4 certificate of authenticity to the consumer at the time of sale. The
5 certificate of authenticity shall be in writing, shall be signed by
6 the dealer or his or her authorized agent, and shall specify the date
7 of sale. The certificate of authenticity shall be in at least 10-point
8 boldface type and shall contain the dealer's true legal name and
9 street address. The dealer shall retain a copy of the certificate of
10 authenticity for not less than seven years. Each certificate of
11 authenticity shall do all of the following:

12 (1) Describe the collectible and specify the name of the ~~sports~~
13 personality who autographed it.

14 (2) Either specify the purchase price and date of sale or be
15 accompanied by a separate invoice setting forth that information.

16 (3) Contain an express warranty, which shall be conclusively
17 presumed to be part of the bargain, of the authenticity of the
18 collectible. This warranty shall not be negated or limited by reason
19 of the lack of words such as "warranty" or "guarantee" or because
20 the dealer does not have a specific intent or authorization to make
21 the warranty or because any statement relevant to the collectible
22 is or purports to be, or is capable of being, merely the dealer's
23 opinion.

24 (4) Specify whether the collectible is offered as one of a limited
25 edition and, if so, specify (A) how the collectible and edition are
26 numbered and (B) the size of the edition and the size of any prior
27 or anticipated future edition, if known. If the size of the edition
28 and the size of any prior or anticipated future edition is not known,
29 the certificate shall contain an explicit statement to that effect.

30 (5) Indicate whether the dealer is surety bonded or is otherwise
31 insured to protect the consumer against errors and omissions of
32 the dealer and, if bonded or insured, provide proof thereof.

33 (6) Indicate the last four digits of the dealer's resale certificate
34 number from the State Board of Equalization.

35 (7) Indicate whether the item was autographed in the presence
36 of the dealer and specify the date and location of, and the name of
37 a witness to, the autograph signing.

38 (8) Indicate whether the item was obtained or purchased from
39 a third party. If so, indicate the name and address of this third
40 party.

1 (9) Include an identifying serial number that corresponds to an
2 identifying number printed on the collectible item, if any. The
3 serial number shall also be printed on the sales receipt. If the sales
4 receipt is printed electronically, the dealer may manually write the
5 serial number on the receipt.

6 (c) No dealer shall represent an item as a collectible if it was
7 not autographed by the ~~sports~~ personality in his or her own hand.

8 (d) No dealer shall display or offer for sale a collectible in this
9 state unless, at the location where the collectible is offered for sale
10 and in close proximity to the collectible merchandise, there is a
11 conspicuous sign that reads as follows:

12 “SALE OF AUTOGRAPHED ~~SPORTS~~ MEMORABILIA: AS
13 REQUIRED BY LAW, A DEALER WHO SELLS TO A
14 CONSUMER ANY ~~SPORTS~~ MEMORABILIA DESCRIBED
15 AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN
16 CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE.
17 THIS DEALER MAY BE SURETY BONDED OR OTHERWISE
18 INSURED TO ENSURE THE AUTHENTICITY OF ANY
19 COLLECTIBLE SOLD BY THIS DEALER.”

20 (e) Any dealer engaged in a mail-order or telephone-order
21 business for the sale of collectibles in or from this state:

22 (1) Shall include the disclosure specified in subdivision (d), in
23 type of conspicuous size, in any written advertisement relating to
24 a collectible.

25 (2) Shall include in each television advertisement relating to a
26 collectible the following written on-screen message, which shall
27 be prominently displayed, easily readable, and clearly visible for
28 no less than five seconds, and which shall be repeated for five
29 seconds once during each four-minute segment of the advertisement
30 following the initial four minutes:

31 “A written certificate of authenticity is provided with each
32 autographed collectible, as required by law. This dealer may be
33 surety bonded or otherwise insured to ensure the authenticity of
34 any collectible sold by this dealer.”

35 (3) Shall include as part of the oral message of each radio
36 advertisement for a collectible the disclosure specified in
37 subdivision (d).

38 (f) No dealer shall display or offer for sale a collectible in this
39 state at any trade show or similar event primarily featuring sales
40 of collectibles or other ~~sports~~ memorabilia that offers onsite

1 admission ticket sales unless, at each onsite location where
2 admission tickets are sold, there is prominently displayed a
3 specimen example of a certificate of authenticity.

4 (g) Any consumer injured by the failure of a dealer to provide
5 a certificate of authenticity containing the information required by
6 this section, or by a dealer's furnishing of a certificate of
7 authenticity that is false, shall be entitled to recover, in addition
8 to actual damages, a civil penalty in an amount equal to 10 times
9 actual damages, plus court costs, reasonable attorney's fees,
10 interest, and expert witness fees, if applicable, incurred by the
11 consumer in the action. The court, in its discretion, may award
12 additional damages based on the egregiousness of the dealer's
13 conduct. The remedy specified in this section is in addition to, and
14 not in lieu of, any other remedy that may be provided by law.

15 (h) No person shall represent himself or herself as a dealer in
16 this state unless he or she possesses a valid resale certificate
17 number from the State Board of Equalization.

18 (i) A dealer may be surety bonded or otherwise insured for
19 purposes of indemnification against errors and omissions arising
20 from the authentication, sale, or resale of collectibles.

21 (j) Whenever a promoter arranges or organizes a trade show
22 featuring collectibles and autograph signings, the promoter shall
23 notify, in writing, any dealer who has agreed to purchase or rent
24 space in this trade show what the promoter will do if any laws of
25 this state are violated, including the fact that law enforcement
26 officials will be contacted when those laws are violated. This notice
27 shall be delivered to the dealer, at his or her registered place of
28 business, at the time the agreement to purchase space in the trade
29 show is made. The following language shall be included in each
30 notice:

31 "As a vendor at this collectibles trade show, you are a
32 professional representative of this hobby. As a result, you will be
33 required to follow the laws of this state, including laws regarding
34 the sale and display of collectibles, as defined in Section 1739.7
35 of the Civil Code, forged and counterfeit collectibles and
36 autographs, and mint and limited edition collectibles. If you do
37 not obey the laws, you may be evicted from this trade show, be

1 reported to law enforcement, and be held liable for a civil penalty
2 of 10 times the amount of damages.”

O