

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1570

Introduced by Assembly Member Chang
*(Coauthors: Assembly Members Baker, Brough, Gallagher,
Cristina Garcia, and Lackey)*
(Coauthors: Senators Allen, Anderson, Berryhill, and Nguyen)

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 amended, 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 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 item sold or offered for
12 sale in or from this state by a dealer to a consumer for five dollars
13 (\$5) or more.

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

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

1 telephone order, or cable television business for the sale of
2 collectibles.

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

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

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

11 (B) Any oral representation.

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

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

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

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

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

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

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

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

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

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

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

1 (9) "Person" means any natural person, partnership, corporation,
2 limited liability company, company, trust, association, or other
3 entity, however organized.

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

15 (1) Describe the collectible and specify the name of the
16 personality who autographed it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (3) Shall include as part of the oral message of each radio
39 advertisement for a collectible the disclosure specified in
40 subdivision (d).

1 (f) No dealer shall display or offer for sale a collectible in this
2 state at any trade show or similar event primarily featuring sales
3 of collectibles or other memorabilia that offers onsite admission
4 ticket sales unless, at each onsite location where admission tickets
5 are sold, there is prominently displayed a specimen example of a
6 certificate of authenticity.

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

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

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

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

34 “As a vendor at this collectibles trade show, you are a
35 professional representative of this hobby. As a result, you will be
36 required to follow the laws of this state, including laws regarding
37 the sale and display of collectibles, as defined in Section 1739.7
38 of the Civil Code, forged and counterfeit collectibles and
39 autographs, and mint and limited edition collectibles. If you do
40 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.”

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