

AMENDED IN ASSEMBLY APRIL 25, 2016

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. *law, under specified circumstances, the personality who signs the memorabilia, and a provider of an online marketing platform from the definition of a dealer.*

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

1 out as having that knowledge or skill. “Dealer” includes an
2 auctioneer who sells collectibles at a public auction, and also
3 includes persons who are consignors or representatives or agents
4 of auctioneers. “Dealer” includes a person engaged in a mail order,
5 telephone order, *online*, or cable television business for the sale
6 of collectibles.

7 (B) “Dealer” does not include a pawnbroker licensed pursuant
8 to Chapter 3 (commencing with Section 21300) of Division 8 of
9 the Financial Code, if the collectible was acquired through a
10 foreclosure on a collateral loan. “Dealer” *also does not include*
11 *the personality who signs the memorabilia or a provider of an*
12 *online marketplace platform.*

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

14 (A) Any representation in writing, including, but not limited to,
15 a representation in an advertisement, brochure, catalog, flyer,
16 invoice, sign, *Internet Web page*, *email*, or other commercial or
17 promotional material.

18 (B) Any oral representation.

19 (C) Any representation included in a radio or television
20 broadcast *or online communication* to the public in or from this
21 state.

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

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

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

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

34 (D) The sequence number of the collectible and the number of
35 the total quantity produced in the limited edition are printed on
36 the collectible.

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

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

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

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

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

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

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

22 (1) Describe the collectible and specify the name of the
23 personality who autographed it.

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

26 (3) Contain an express warranty, which shall be conclusively
27 presumed to be part of the bargain, of the authenticity of the
28 collectible. This warranty shall not be negated or limited by reason
29 of the lack of words such as “warranty” or “guarantee” or because
30 the dealer does not have a specific intent or authorization to make
31 the warranty or because any statement relevant to the collectible
32 is or purports to be, or is capable of being, merely the dealer’s
33 opinion.

34 (4) Specify whether the collectible is offered as one of a limited
35 edition and, if so, specify (A) how the collectible and edition are
36 numbered and (B) the size of the edition and the size of any prior
37 or anticipated future edition, if known. If the size of the edition
38 and the size of any prior or anticipated future edition is not known,
39 the certificate shall contain an explicit statement to that effect.

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

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

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

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

12 (9) Include an identifying serial number that corresponds to an
13 identifying number printed on the collectible item, if any. The
14 serial number shall also be printed on the sales receipt. If the sales
15 receipt is printed electronically, the dealer may manually write the
16 serial number on the receipt.

17 (c) A dealer shall not represent an item as a collectible if it was
18 not autographed by the personality in his or her own hand.

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

23 "SALE OF AUTOGRAPHED MEMORABILIA: AS REQUIRED
24 BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY
25 MEMORABILIA DESCRIBED AS BEING AUTOGRAPHED
26 MUST PROVIDE A WRITTEN CERTIFICATE OF
27 AUTHENTICITY AT THE TIME OF SALE. THIS DEALER
28 MAY BE SURETY BONDED OR OTHERWISE INSURED TO
29 ENSURE THE AUTHENTICITY OF ANY COLLECTIBLE
30 SOLD BY THIS DEALER."

31 (e) Any dealer engaged in a mail-order or telephone-order *or*
32 *online* business for the sale of collectibles in or from this state:

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

36 (2) Shall include in each television *or online* advertisement
37 relating to a collectible the following written on-screen message,
38 which shall be prominently displayed, easily readable, and clearly
39 visible for no less than five seconds, and which shall be repeated

1 for five seconds once during each four-minute segment of the
2 advertisement following the initial four minutes:

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

7 (3) Shall include as part of the oral message of each radio
8 advertisement for a collectible the disclosure specified in
9 subdivision (d).

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

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

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

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

33 (j) Whenever a promoter arranges or organizes a trade show
34 featuring collectibles and autograph signings, the promoter shall
35 notify, in writing, any dealer who has agreed to purchase or rent
36 space in this trade show what the promoter will do if any laws of
37 this state are violated, including the fact that law enforcement
38 officials will be contacted when those laws are violated. This notice
39 shall be delivered to the dealer, at his or her registered place of
40 business, at the time the agreement to purchase space in the trade

1 show is made. The following language shall be included in each
2 notice:

3 “As a vendor at this collectibles trade show, you are a
4 professional representative of this hobby. As a result, you will be
5 required to follow the laws of this state, including laws regarding
6 the sale and display of collectibles, as defined in Section 1739.7
7 of the Civil Code, forged and counterfeit collectibles and
8 autographs, and mint and limited edition collectibles. If you do
9 not obey the laws, you may be evicted from this trade show, be
10 reported to law enforcement, and be held liable for a civil penalty
11 of 10 times the amount of damages.”

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