

AMENDED IN ASSEMBLY APRIL 17, 1995
AMENDED IN ASSEMBLY MARCH 23, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 434

Introduced by Assembly Member Rainey

February 15, 1995

An act to amend ~~Section 21671~~ *Sections 21671 and 21672* of the Business and Professions Code, and to amend Section 1739.7 of the Civil Code, relating to collectibles.

LEGISLATIVE COUNSEL'S DIGEST

AB 434, as amended, Rainey. Collectibles.

(1) Existing law ~~regulates the sale~~ *provides for the regulation* of autographed sports memorabilia *sold or offered for sale in or from this state by a dealer, as defined, to a consumer for \$50 or more* by, among other things, requiring dealers ~~who make sales of items represented as autographed sports items, and priced over \$50, in or from this state,~~ to provide a prescribed certificate of authenticity *and to make a prescribed disclosure. Existing law provides that any consumer injured by certain actions of the dealer shall be entitled to a civil penalty equal to 3 times actual damages.*

This bill would ~~require a show promoter, as defined, to comply with prescribed requirements, among other things,~~ *expand the applicability of these provisions to autographed sports items sold or offered for \$25 or more, require the disclosure to specify that a dealer may be surety bonded, and*

increase the amount of the civil penalty to 10 times the amount of actual damages.

This bill would also prohibit a person from representing himself or herself as a dealer without a valid resale certificate, require a promoter, as defined, to deliver a specified letter to a dealer who agrees to purchase or rent space in a trade show that features collectibles, and provide that a promoter shall be liable for damages for the knowing failure to perform specified duties and may be liable for a civil penalty.

(2) Existing law requires any person or agent thereof who knowingly ~~sells or trades an altered or refurbished~~ commits proscribed acts with respect to sports trading ~~card~~ cards without a ~~prescribed~~ certificate to provide a refund to the buyer, as specified, and be liable to the buyer for a civil penalty not to exceed \$1,000.

This bill would increase the maximum amount of the civil penalty to ~~\$2,000~~ \$5,000.

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. Section 21671 of the Business and
2 Professions Code is amended to read:

3 21671. (a) Any sports trading card that is altered or
4 refurbished shall be accompanied by a certificate stating
5 the exact work done to the sports trading card, the date
6 the work was performed, the cost of that work, and the
7 name, phone number, and address of the person who
8 performed the work.

9 (b) Any person or agent thereof, who knowingly sells
10 or trades a sports card in violation of subdivision (a), shall
11 both:

12 (1) Refund to the buyer, the full amount paid for the
13 altered or refurbished sports trading card or the full retail
14 value of any nonmonetary consideration received in
15 exchange for the altered or refurbished sports trading
16 card, or both.

17 (2) Be liable to the buyer for a civil penalty not to
18 ~~exceed two thousand dollars (\$2,000) for~~ exceed five



1 *thousand dollars (\$5,000) for each violation. Each card*
2 *sold represents a separate and distinct violation.*

3 SEC. 2. *Section 21672 of the Business and Professions*
4 *Code is amended to read:*

5 21672. (a) Any person, or agent thereof, who
6 knowingly manufactures, produces, or distributes
7 unlicensed or counterfeit sports trading cards with the
8 intent to deceive, injure, or defraud another, is guilty of
9 a misdemeanor.

10 Any person, or agent thereof, who violates this
11 subdivision shall do both of the following:

12 (1) Refund to the buyer the full amount paid for the
13 unlicensed or counterfeit sports trading card or the full
14 retail value of any nonmonetary consideration received
15 in exchange for the unlicensed or counterfeit sports
16 trading card, or both.

17 (2) Be liable to the buyer for a civil penalty not to
18 exceed ~~one~~ *five* thousand dollars ~~(\$1,000)~~ *(\$5,000)* for
19 each violation. Each card sold represents a separate and
20 distinct violation.

21 (b) Any person who knowingly sells a cut, unlicensed
22 sports trading card that has been produced by cutting the
23 card from a publication in which unlicensed sports
24 trading cards are bound, without disclosing the source
25 and the means of producing the card, with the intent to
26 deceive, injure, or defraud another, is guilty of a
27 misdemeanor.

28 Any person who violates this subdivision shall do both
29 of the following:

30 (1) Refund to the buyer the full consideration paid or
31 furnished for the cut, unlicensed sports trading card.

32 (2) Be liable to the buyer for a civil penalty not to
33 exceed ~~one~~ *five* thousand dollars ~~(\$1,000)~~ *(\$5,000)* for
34 each violation. Each card sold represents a separate and
35 distinct violation.

36 This provision does not apply to a sports trading card
37 that is excluded from the definition of “unlicensed sports
38 trading card” pursuant to subdivision (d) of Section 21670
39 of the Business and Professions Code by reason of being
40 bound in a publication.



1 SEC. 3. Section 1739.7 of the Civil Code is amended
2 to read:

3 1739.7. (a) As used in this section:

4 (1) "Autographed" means bearing the actual
5 signature of a sports personality signed by that
6 individual's own hand.

7 (2) "Collectible" means an autographed sports item,
8 including, but not limited to, a photograph, book, ticket,
9 plaque, sports program, trading card, item of sports
10 equipment or clothing, or other sports memorabilia sold
11 or offered for sale in or from this state by a dealer to a
12 ~~consumer for fifty dollars (\$50) or more.~~ *consumer for*
13 *twenty-five dollars (\$25) or more.*

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

18 (4) "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
21 her occupation holds himself or herself out as having
22 knowledge or skill peculiar to collectibles, or to whom
23 that knowledge or skill may be attributed by his or her
24 employment of an agent or other intermediary that by his
25 or her occupation holds himself or herself out as having
26 that knowledge or skill. "Dealer" includes an auctioneer
27 who sells collectibles at a public auction, and also includes
28 persons who are consignors or representatives or agents
29 of auctioneers. *"Dealer" includes a person engaged in a*
30 *mail order, telephone order, or cable television business*
31 *for the sale of collectibles.*

32 (5) "Description" means any of the following:

33 (A) Any representation in writing, including, but not
34 limited to, a representation in an advertisement,
35 brochure, catalog, flyer, invoice, sign, or other
36 commercial or promotional material.

37 (B) Any oral representation.

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



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

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

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

10 (C) The producer makes available, upon request of a
11 consumer, evidence that the electronic encoding, films,
12 molds, or plates used to create the collectible have been
13 destroyed after the specified number of collectibles have
14 been produced.

15 (7) “Mint condition” means any collectible sold on the
16 open market that is in the same unopened, unmarked, or
17 unblemished condition that it was in when it was first sold
18 on the open market.

19 (8) “Promoter” means a person who arranges, holds,
20 organizes, or presents a trade show featuring collectibles.

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

24 ~~(7) “Show promoter” means any person, including a~~
25 ~~dealer, who is in the business of staging events where~~
26 ~~collectibles are sold to consumers.~~

27 (b) Whenever a dealer, in selling or offering to sell to
28 a consumer a collectible in or from this state, provides a
29 description of that collectible as being autographed, the
30 dealer shall furnish a certificate of authenticity to the
31 consumer at the time of sale. The certificate of
32 authenticity shall be in writing and shall be signed by the
33 dealer or his or her authorized agent. The certificate of
34 authenticity shall be in at least 10-point boldface type and
35 shall contain the dealer’s true legal name and street
36 address. Each certificate of authenticity shall do all of the
37 following:

38 (1) Describe the collectible and specify the name of
39 the sports personality who autographed it.



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

4 (3) Contain an express warranty, which shall be
5 conclusively presumed to be part of the bargain, of the
6 authenticity of the collectible. This warranty shall not be
7 negated or limited by reason of the lack of words such as
8 “warranty” or “guarantee” or because the dealer does not
9 have a specific intent or authorization to make the
10 warranty or because any statement relevant to the
11 collectible is or purports to be, or is capable of being,
12 merely the dealer’s opinion.

13 (4) Specify if the collectible is offered as one of a
14 limited edition and, if so, shall specify (A) how the
15 collectible and edition are numbered and (B) the size of
16 the edition and the size of any prior or anticipated future
17 edition, if known, or if not known, the certificate shall
18 contain an explicit statement to that effect.

19 (5) *Indicate whether the dealer is surety bonded to*
20 *insure the consumer against errors and omissions of the*
21 *dealer and, if bonded, provide proof thereof.*

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

25 (d) No dealer shall display or offer for sale a collectible
26 in this state, unless at the location where the collectible
27 is offered for sale, and in close proximity to the collectible
28 merchandise, there is a conspicuous sign that reads as
29 follows:
30



1 “SALE OF AUTOGRAPHED SPORTS
 2 MEMORABILIA AS REQUIRED BY LAW, A
 3 DEALER WHO SELLS TO A CONSUMER ANY
 4 SPORTS MEMORABILIA DESCRIBED AS BEING
 5 ~~AUTOGRAPHED FOR FIFTY DOLLARS (\$50) OR~~
 6 *AUTOGRAPHED FOR TWENTY-FIVE DOLLARS*
 7 *(\$25) OR MORE MUST PROVIDE A WRITTEN*
 8 *CERTIFICATE OF AUTHENTICITY AT THE TIME*
 9 *OF SALE.” SALE. THIS DEALER MAY BE SURETY*
 10 *BONDED TO ENSURE THE AUTHENTICITY OF*
 11 *ANY COLLECTIBLE SOLD BY THIS DEALER.”*

12
 13 (e) Any dealer engaged in a mail-order or
 14 telephone-order business for the sale of collectibles in or
 15 from this state:

16 (1) Shall include the disclosure specified in paragraph
 17 (d), in type of conspicuous size, in any written
 18 advertisement relating to a collectible.

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

26
 27 “A written certificate of authenticity is provided with
 28 each autographed collectible, as required by ~~law.~~ *law.*
 29 *This dealer may be surety bonded to ensure the*
 30 *authenticity of any collectible sold by this dealer.”*

31
 32 (3) Shall include as part of the oral message of each
 33 radio advertisement for a collectible the disclosure
 34 specified in subdivision (d).

35 (f) No dealer shall display or offer for sale a collectible
 36 in this state at any trade show or similar event primarily
 37 featuring sales of collectibles or other sports memorabilia
 38 which offers onsite admission ticket sales, unless at each
 39 onsite location where admission tickets are sold, there is



1 prominently displayed a specimen example of a
2 certificate of authenticity.

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

13 ~~(h) A show promoter shall, in order to protect a~~
14 ~~consumer who purchases memorabilia at an event, (1)~~
15 ~~post, in clear view, the State Board of Equalization~~
16 ~~identification number for each dealer at the event and~~
17 ~~(2) require all dealers participating in the show to~~
18 ~~specifically agree to provide a certificate of authenticity~~
19 ~~where required by this section.~~

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

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

26 *(j) Whenever a promoter arranges or organizes a*
27 *trade show featuring collectibles, the promoter shall*
28 *prepare and deliver to any dealer who has agreed to*
29 *purchase or rent space in this trade show, a letter setting*
30 *forth any representations and promises made by the*
31 *promoter with respect to the promotion of the trade*
32 *show, including, but not limited to, any promised*
33 *advertisements or mass mailings designed to advertise*
34 *the trade show. The letter shall also specify what the*
35 *promoter will do if any laws of this state are violated,*
36 *including the fact that law enforcement officials will be*
37 *contacted when those laws are violated. This letter shall*
38 *be delivered to the dealer, at his or her registered place*
39 *of business, at the time the agreement to purchase space*
40 *in the trade show is made. The dealer shall also receive a*



1 copy of the letter on the day of the trade show upon sign
2 in. The following language shall be included in each
3 letter:

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

14 (k) If a promoter knowingly fails to perform the duties
15 specified in this section, any dealer who has purchased or
16 rented space in the trade show shall be entitled to a
17 refund of all moneys paid to the promoter with respect to
18 that trade show. Furthermore, if a promoter knowingly
19 fails to perform the duties specified in this section, the
20 consumer shall be entitled to a full refund of any amount
21 paid to the promoter as fees for admission to the event.
22 If a promoter is held liable for damages pursuant to this
23 subdivision, he or she may also be liable for a civil penalty
24 of 10 times the amount of damages.

