

Assembly Bill No. 434

Passed the Assembly July 24, 1995

Chief Clerk of the Assembly

Passed the Senate July 21, 1995

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1995, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend 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, Rainey. Collectibles.

(1) Existing law provides for the regulation of sports memorabilia bearing the actual signature of a sports personality and 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 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, among other things, expand the applicability of these provisions to sports items bearing the actual signature of a personality and sold or offered for \$25 or more, require the disclosure to specify that a dealer may be surety bonded or otherwise insured, 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, and require a promoter, as defined, to deliver a specified notice to a dealer who agrees to purchase or rent space in a trade show that features collectibles.

(2) Existing law requires any person or agent thereof who knowingly commits proscribed acts with respect to sports trading cards 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 \$5,000.



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

SECTION 1. Section 21671 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1739.7. (a) As used in this section:

(1) “Autographed” means bearing the actual signature of a personality signed by that individual’s own hand.

(2) “Collectible” means an autographed sports item, including, but not limited to, a photograph, book, ticket, plaque, sports program, trading card, item of sports equipment or clothing, or other sports memorabilia sold or offered for sale in or from this state by a dealer to a consumer for twenty-five dollars (\$25) or more.

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

(4) “Dealer” means a person who is in the business of selling or offering for sale collectibles in or from this state, exclusively or nonexclusively, or a person who by his or her occupation holds himself or herself out as having



knowledge or skill peculiar to collectibles, or to whom that knowledge or skill may be attributed by his or her employment of an agent or other intermediary that by his or her occupation holds himself or herself out as having that knowledge or skill. “Dealer” includes an auctioneer who sells collectibles at a public auction, and also includes persons who are consignors or representatives or agents of auctioneers. “Dealer” includes a person engaged in a mail order, telephone order, or cable television business for the sale of collectibles.

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

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

(B) Any oral representation.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(5) Indicate whether the dealer is surety bonded or is otherwise insured to protect the consumer against errors



and omissions of the dealer and, if bonded or insured, provide proof thereof.

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

(7) Indicate whether the item was autographed in the presence of the dealer.

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

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

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

“SALE OF AUTOGRAPHED SPORTS
MEMORABILIA AS REQUIRED BY LAW, A
DEALER WHO SELLS TO A CONSUMER ANY
SPORTS MEMORABILIA DESCRIBED AS BEING
AUTOGRAPHED FOR TWENTY-FIVE DOLLARS
(\$25) OR MORE MUST PROVIDE A WRITTEN
CERTIFICATE OF AUTHENTICITY AT THE TIME
OF SALE. THIS DEALER MAY BE SURETY
BONDED OR OTHERWISE INSURED TO ENSURE
THE AUTHENTICITY OF ANY COLLECTIBLE
SOLD BY THIS DEALER.”

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

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

(2) Shall include in each television advertisement relating to a collectible the following written on-screen message, which shall be prominently displayed, shall be easily readable, and shall be clearly visible for no less than



five seconds and shall be repeated for five seconds once during each four-minute segment of the advertisement following the initial four minutes:

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

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

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

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

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

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

(j) Whenever a promoter arranges or organizes a trade show featuring collectibles, the promoter shall notify, in writing, any dealer who has agreed to purchase



or rent space in this trade show what the promoter will do if any laws of this state are violated, including the fact that law enforcement officials will be contacted when those laws are violated. This notice shall be delivered to the dealer, at his or her registered place of business, at the time the agreement to purchase space in the trade show is made. The following language shall be included in each notice:

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



Approved _____, 1995

Governor

