

Assembly Bill No. 1570

CHAPTER 258

An act to amend Section 1739.7 of, and 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.

[Approved by Governor September 9, 2016. Filed with
Secretary of State September 9, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1570, 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, under specified circumstances, the personality who signs the memorabilia, and a provider or operator of an online marketplace, as specified, from the definition of a dealer.

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

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

TITLE 1.1A. AUTOGRAPHED MEMORABILIA

SEC. 2. 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 item sold or offered for sale in or from this state by a dealer to a consumer for five dollars (\$5) 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) (A) “Dealer” means a person who is principally 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, online, or cable television business for the sale of collectibles.

(B) “Dealer” does not include any of the following:

(i) A pawnbroker licensed pursuant to Chapter 3 (commencing with Section 21300) of Division 8 of the Financial Code, if the collectible was acquired through a foreclosure on a collateral loan, provided that the pawnbroker does not hold himself or herself out as having knowledge or skill peculiar to collectibles.

(ii) The personality who signs the memorabilia.

(iii) A provider or operator of an online marketplace, provided that the online marketplace provider or operator is not principally in the business of selling, or offering for sale, collectibles, in or from the state, exclusively or nonexclusively, or does not hold itself out as having knowledge or skill peculiar to 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, Internet Web page, email, or other commercial or promotional material.

(B) Any oral representation.

(C) Any representation included in a radio or television broadcast or online communication 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.

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

(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 sign 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, autograph signings, or both.

(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, shall be signed by the dealer or his or her authorized agent, and shall specify the date of sale. 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. The dealer shall retain a copy of the certificate of authenticity for not less than seven years. Each certificate of authenticity shall do all of the following:

(1) Describe the collectible and specify the name of the 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 whether the collectible is offered as one of a limited edition and, if so, 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. If the size of the edition and the size of any prior or anticipated future edition is 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 and specify the date and location of, and the name of a witness to, the autograph signing.

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

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

(c) A dealer shall not represent an item as a collectible if it was not autographed by the 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 MEMORABILIA: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY MEMORABILIA DESCRIBED AS BEING AUTOGRAPHED 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, telephone-order, or online business for the sale of collectibles in or from this state:

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

(2) Shall include in each television or online advertisement relating to a collectible the following written on-screen message, which shall be prominently displayed, easily readable, and clearly visible for no less than five seconds, and which 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 memorabilia that 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, reasonable attorney’s

fees, interest, and expert witness fees, if applicable, incurred by the consumer in the action. The court, in its discretion, may award additional damages based on the egregiousness of the dealer's conduct. 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 and autograph signings, 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.”