

CONCURRENCE IN SENATE AMENDMENTS

AB 1570 (Chang)

As Amended June 8, 2016

Majority vote

ASSEMBLY: 78-0 (May 12, 2016)

SENATE: 37-0 (August 11, 2016)

Original Committee Reference: **P. & C.P.**

SUMMARY: Requires dealers who advertise and sell any type of autographed collectible to provide a certificate of authenticity to the purchaser, and generally expands the variety of consumer protections that currently only apply to autographed sports memorabilia to cover all such collectibles.

The Senate amendments clarify the definition of a "dealer" of collectibles to exclude:

- 1) A licensed pawnbroker, provided that the pawnbroker does not hold himself or herself out as having knowledge or skill peculiar to collectibles.
- 2) The personality who signs the memorabilia.
- 3) A provider or operator of an online marketplace, provided that the 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.

EXISTING LAW:

- 1) Requires a dealer, in selling or offering to sell to a consumer an autographed sports collectible in or from this state, to furnish a certificate of authenticity to the consumer at the time of sale, as specified. (Civil Code (CC) Section 1739.7(b))
- 2) Requires each certificate of authenticity to do all of the following:
 - a) Describe the collectible and the name of the sports personality who autographed it;
 - b) Either specify the purchase price and date of sale or be accompanied by a separate invoice setting forth that information;
 - c) Contain an express warranty, which shall be conclusively presumed to be part of the bargain, of the authenticity of the collectible, as specified;
 - d) Specify whether the collectible is offered as one of a limited edition and, if so, specify how the collectible and edition are numbered; and the size of the edition and the size of any prior or anticipated future edition, as specified;
 - e) 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;

- f) Indicate the last four digits of the dealer's resale certificate number from the State Board of Equalization;
 - g) 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;
 - h) Indicate whether the item was obtained or purchased from a third party, and the name and address of this third party, if applicable; and
 - i) Include an identifying serial number that corresponds to an identifying number printed on the collectible item, if any, which shall also be printed on the sales receipt. (CC 1739.7(b))
- 3) Prohibits a dealer from representing an item as a collectible if it was not autographed by the sports personality in his or her own hand. (CC 1739.7(c))
- 4) Entitles any consumer injured by the failure of a dealer to provide a valid certificate 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, plus additional damages based on the egregiousness of the dealer's conduct. (CC 1739.7(g))

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: According to the author, there is widespread fraud in the market for autographed collectibles: "Experts estimate that... 94% of all autographed Beatles memorabilia is forged, as are 76% of Marilyn Monroe and Elvis Presley collectibles. In the last twenty years, the FBI [Federal Bureau of Investigation] instituted two major investigations uncovering millions in forged sports, entertainment and historical autographed memorabilia – both cases involved operations in California. During the most recent investigation, the FBI estimated forged memorabilia 'comprises between \$500,000,000 and \$900,000,000' of the overall market."

Under existing law, dealers in signed sports memorabilia must furnish a certificate of authenticity to the consumer at time of sale. The certificate provides the consumer with information about the collectible and the dealer, as well as an express warranty. Dealers must also display at the sale site and in advertisements a disclosure regarding the rights of the consumer. A consumer injured by an omitted or false certificate may seek actual damages, a civil penalty in an amount equal to 10 times actual damages, plus court costs, reasonable attorney's fees, interest, expert witness fees, and additional damages for egregious conduct, incurred by the consumer in the action. Dealers must have a valid resale certificate number from the State Board of Equalization and be surety bonded or insured.

This bill would expand those same protections to all forms of signed collectibles, and also clarify that these protections apply to collectibles offered for sale online.