

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2368

Introduced by Assembly Member Wagner

February 21, 2014

An act to ~~amend Section 3294 of the Civil Code, relating to civil actions~~ amend Section 1739.7 of the Civil Code, relating to autographed sports memorabilia.

LEGISLATIVE COUNSEL'S DIGEST

AB 2368, as amended, Wagner. ~~Civil actions: damages. Civil law: obligations: sports 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.

This bill would revise the definition of "collectible" by increasing the price of the sports item sold or offered for sale to \$15 or more. The bill also would make various technical, nonsubstantive changes to these provisions.

~~Existing law authorizes the plaintiff, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, to recover damages for the sake of example and by way of punishing the defendant in addition to the actual damages.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

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 1739.7 of the Civil Code is amended to
2 read:
3 1739.7. (a) As used in this section:
4 (1) “Autographed” means bearing the actual signature of a
5 personality signed by that individual’s own hand.
6 (2) “Collectible” means an autographed sports item, including,
7 but not limited to, a photograph, book, ticket, plaque, sports
8 program, trading card, item of sports equipment or clothing, or
9 other sports memorabilia sold or offered for sale in or from this
10 state by a dealer to a consumer for ~~five dollars (\$5)~~ fifteen dollars
11 (\$15) or more.
12 (3) “Consumer” means any natural person who purchases a
13 collectible from a dealer for personal, family, or household
14 purposes. “Consumer” also includes a prospective purchaser
15 meeting these criteria.
16 (4) “Dealer” means a person who is in the business of selling
17 or offering for sale collectibles in or from this state, exclusively
18 or nonexclusively, or a person who by his or her occupation holds
19 himself or herself out as having knowledge or skill peculiar to
20 collectibles, or to whom that knowledge or skill may be attributed
21 by his or her employment of an agent or other intermediary that
22 by his or her occupation holds himself or herself out as having that
23 knowledge or skill. “Dealer” includes an auctioneer who sells
24 collectibles at a public auction, and also includes persons who are
25 consignors or representatives or agents of auctioneers. “Dealer”
26 includes a person engaged in a mail order, telephone order, or
27 cable television business for the sale of collectibles.
28 (5) “Description” means any of the following:
29 (A) Any representation in writing, including, but not limited to,
30 a representation in an advertisement, brochure, catalog, flyer,
31 invoice, sign, or other commercial or promotional material.
32 (B) Any oral representation.
33 (C) Any representation included in a radio or television
34 broadcast to the public in or from this state.

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

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

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

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

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

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

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

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

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

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

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

30 (b) Whenever a dealer, in selling or offering to sell to a
31 consumer a collectible in or from this state, provides a description
32 of that collectible as being autographed, the dealer shall furnish a
33 certificate of authenticity to the consumer at the time of sale. The
34 certificate of authenticity shall be in writing, shall be signed by
35 the dealer or his or her authorized agent, and shall specify the date
36 of sale. The certificate of authenticity shall be in at least 10-point
37 boldface type and shall contain the dealer’s true legal name and
38 street address. The dealer shall retain a copy of the certificate of
39 authenticity for not less than seven years. Each certificate of
40 authenticity shall do all of the following:

- 1 (1) Describe the collectible and specify the name of the sports
2 personality who autographed it.
- 3 (2) Either specify the purchase price and date of sale or be
4 accompanied by a separate invoice setting forth that information.
- 5 (3) Contain an express warranty, which shall be conclusively
6 presumed to be part of the bargain, of the authenticity of the
7 collectible. This warranty shall not be negated or limited by reason
8 of the lack of words such as “warranty” or “guarantee” or because
9 the dealer does not have a specific intent or authorization to make
10 the warranty or because any statement relevant to the collectible
11 is or purports to be, or is capable of being, merely the dealer’s
12 opinion.
- 13 (4) Specify whether the collectible is offered as one of a limited
14 edition and, if so, specify (A) how the collectible and edition are
15 numbered and (B) the size of the edition and the size of any prior
16 or anticipated future edition, if known. If the size of the edition
17 and the size of any prior or anticipated future edition is not known,
18 the certificate shall contain an explicit statement to that effect.
- 19 (5) Indicate whether the dealer is surety bonded or is otherwise
20 insured to protect the consumer against errors and omissions of
21 the dealer and, if bonded or insured, provide proof thereof.
- 22 (6) Indicate the last four digits of the dealer’s resale certificate
23 number from the State Board of Equalization.
- 24 (7) Indicate whether the item was autographed in the presence
25 of the dealer and specify the date and location of, and the name of
26 a witness to, the autograph signing.
- 27 (8) Indicate whether the item was obtained or purchased from
28 a third party. If so, indicate the name and address of this third
29 party.
- 30 (9) Include an identifying serial number that corresponds to an
31 identifying number printed on the collectible item, if any. The
32 serial number shall also be printed on the sales receipt. If the sales
33 receipt is printed electronically, the dealer may manually write the
34 serial number on the receipt.
- 35 (c) No dealer shall represent an item as a collectible if it was
36 not autographed by the sports personality in his or her own hand.
- 37 (d) No dealer shall display or offer for sale a collectible in this
38 state unless, at the location where the collectible is offered for sale
39 and in close proximity to the collectible merchandise, there is a
40 conspicuous sign that reads as follows:

1 “SALE OF AUTOGRAPHED SPORTS MEMORABILIA: AS
2 REQUIRED BY LAW, A DEALER WHO SELLS TO A
3 CONSUMER ANY SPORTS MEMORABILIA DESCRIBED
4 AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN
5 CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE.
6 THIS DEALER MAY BE SURETY BONDED OR OTHERWISE
7 INSURED TO ENSURE THE AUTHENTICITY OF ANY
8 COLLECTIBLE SOLD BY THIS DEALER.”

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

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

14 (2) Shall include in each television advertisement relating to a
15 collectible the following written ~~on-screen~~ *onscreen* message,
16 which shall be prominently displayed, easily readable, and clearly
17 visible for no less than five seconds, and which shall be repeated
18 for five seconds once during each four-minute segment of the
19 advertisement following the initial four minutes:

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

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

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

33 (g) Any consumer injured by the failure of a dealer to provide
34 a certificate of authenticity containing the information required by
35 this section, or by a dealer’s furnishing of a certificate of
36 authenticity that is false, shall be entitled to recover, in addition
37 to actual damages, a civil penalty in an amount equal to 10 times
38 actual damages, plus court costs, reasonable attorney’s fees,
39 interest, and expert witness fees, if applicable, incurred by the
40 consumer in the action. The court, in its discretion, may award

1 additional damages based on the egregiousness of the dealer’s
 2 conduct. The remedy specified in this section is in addition to, and
 3 not in lieu of, any other remedy that may be provided by law.

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

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

10 (j) Whenever a promoter arranges or organizes a trade show
 11 featuring collectibles and autograph signings, the promoter shall
 12 notify, ~~in writing,~~ any dealer who has agreed to purchase or rent
 13 space in this trade show, *in writing, of* what the promoter will do
 14 if any laws of this state are violated, including the fact that law
 15 enforcement officials will be contacted when those laws are
 16 violated. This notice shall be delivered to the dealer, at his or her
 17 registered place of business, at the time the agreement to purchase
 18 space in the trade show is made. The following language shall be
 19 included in each notice:

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

29 ~~SECTION 1. Section 3294 of the Civil Code is amended to~~
 30 ~~read:~~

31 ~~3294. (a) In an action for the breach of an obligation not arising~~
 32 ~~from contract, where it is proven by clear and convincing evidence~~
 33 ~~that the defendant has been guilty of oppression, fraud, or malice,~~
 34 ~~the plaintiff, in addition to the actual damages, may recover~~
 35 ~~damages for the sake of example and by way of punishing the~~
 36 ~~defendant.~~

37 ~~(b) An employer shall not be liable for damages pursuant to~~
 38 ~~subdivision (a), based upon acts of an employee of the employer,~~
 39 ~~unless the employer had advance knowledge of the unfitness of~~
 40 ~~the employee and employed him or her with a conscious disregard~~

1 of the rights or safety of others or authorized or ratified the
2 wrongful conduct for which the damages are awarded or was
3 personally guilty of oppression, fraud, or malice. With respect to
4 a corporate employer, the advance knowledge and conscious
5 disregard, authorization, ratification or act of oppression, fraud,
6 or malice must be on the part of an officer, director, or managing
7 agent of the corporation.

8 (e) As used in this section, the following definitions shall apply:

9 (1) "Malice" means conduct that is intended by the defendant
10 to cause injury to the plaintiff or despicable conduct that is carried
11 on by the defendant with a willful and conscious disregard of the
12 rights or safety of others.

13 (2) "Oppression" means despicable conduct that subjects a
14 person to cruel and unjust hardship in conscious disregard of that
15 person's rights.

16 (3) "Fraud" means an intentional misrepresentation, deceit, or
17 concealment of a material fact known to the defendant with the
18 intention on the part of the defendant of thereby depriving a person
19 of property or a legal right or otherwise causing injury.

20 (d) Damages may be recovered pursuant to this section in an
21 action pursuant to Chapter 4 (commencing with Section 377.10)
22 of Title 3 of Part 2 of the Code of Civil Procedure based upon a
23 death that resulted from a homicide for which the defendant has
24 been convicted of a felony, whether or not the decedent died
25 instantly or survived the fatal injury for some period of time. The
26 procedures for joinder and consolidation contained in Section
27 377.62 of the Code of Civil Procedure shall apply to prevent
28 multiple recoveries of punitive or exemplary damages based upon
29 the same wrongful act.

30 (e) The amendments to this section made by Chapter 1498 of
31 the Statutes of 1987 apply to all actions in which the initial trial
32 has not commenced prior to January 1, 1988.