

Not What I Signed Up For: California's New Autograph Law

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Memorabilia dealers operating in California now have a new certificate-of-authenticity requirement. AB 1570, which went into effect Jan. 1, requires a detailed certificate of authenticity for all autographed items sold by dealers for over \$5.

The new law, which did not receive legislative debate, is an expansion of CA Civil Code §1739.7, which had previously just imposed such requirements on sports memorabilia. The new law received support from the [Motion Picture Association](#) of America and the California Police Chiefs Association, due to its focusing attention on the largely unregulated entertainment memorabilia market. However, instead of narrowly tailoring the bill to entertainment memorabilia, the author, now-former Assemblywoman Ling Ling Chang, merely removed the word "sports" from §1739.7, potentially bringing all nonsports autographs, not just entertainment-related ones, within its purview.

How Is This Different From Current Requirements?

California art dealers are already familiar with certificate-of-authenticity requirements through the Farr Act, which requires a certificate of authenticity for the sale of all fine art multiples. Those certificates must contain information such as the number of multiples produced and whether the multiple is a reproduction. Failure to provide such certificates could lead to civil penalties, including refund of the purchase price, or in the case of willful violation, treble damages.

In contrast, some of the information AB 1570 requires on the certificate include:

- An express warranty by the dealer of the autograph's authenticity;
- A statement whether the dealer is surety bonded;
- The name and address of the third party the dealer obtained the item from; and
- Indication whether the item was autographed in the dealer's presence.

The rest of AB 1570's requirements can be found [here](#).

AB 1570 also differs from the Farr Act in its enforcement. While the Farr Act has a statute of limitations requiring any suit to be brought within three years of the item's sale, AB 1570 has no such limitation. More importantly, AB 1570 creates a civil penalty of 10 times actual damages if a buyer is ever injured by failure to receive such a certificate of authenticity. This creates a much more drastic punishment than the Farr Act, raising the stakes for understanding whether one actually falls under AB 1570.

Does This Actually Apply to Markets Other Than Entertainment Memorabilia?

AB 1570, as written, covers all dealer-sold autographed memorabilia, regardless of its market. The new law defines a "collectible" requiring a certificate of authenticity as any autographed item selling for over \$5. "Dealers," on the other hand, are defined as any person "principally in the business of selling or offering for sale" such autographed items. Such a broad definition thus encompasses not only entertainment memorabilia, but dealers selling any autographed item.

Artwork often contains the original signature of the artist, which would place it under the scope of this law. Bookstores, such as ones specializing in rare books, that represent themselves as having specialized knowledge of signed books may also be covered under this law.

After an uproar by several bookstore owners, Assemblywoman Chang addressed concerns over the bill's potential overreach by clarifying that the law was not meant to affect the autographed book and art market. However, California courts are not bound to give any credence to statements by the former assemblywoman to that effect.

In defining their rules of statutory interpretation, California courts have said that the motive of the bill's author is irrelevant in looking at legislative intent. See California Teachers Association v. San Diego Community College District (1981) 28 Cal.3d 692, 700. This is because the author's opinion may not be reflective of the intent of the other legislators when they voted the bill into law. Rather, courts will only look at statements that were made as part of the bill's official record or that constitute a summary of the Legislature's discussion on the bill.

Unfortunately, the legislative history of this bill gives no guidance to the scope. The assigned committees provided no record of debate on the bill, and the bill passed unanimously through both the State Assembly and Senate. The only statement of record is Assemblywoman Chang's own submitted statement quoted in committee reports that the law was meant to protect against "music, movie, historical, or other non-sport related forgeries." Her reference to historical forgeries actually indicates that the bill was not originally intended to be limited to entertainment memorabilia.

Even though Assemblywoman Chang feels confident that her post-enactment comments will be dispositive, as shown above, any such statement carries no relevance as to the Legislature's intent when voting on the bill. Moreover, her own statement made prior to voting directly contradicts that sentiment. Thus, if a dealer were to challenge the statute's application, a court would find little basis to find the law to be limited to only entertainment memorabilia.

Admittedly, this does not mean that every person holding a yard sale and selling an old signed baseball card falls within the scope of this law. First, the law only applies to dealers, defined as those "primarily" in the business of selling autographed items or those who by nature of their profession, hold themselves out as having specialized knowledge of autographed items. Thus, bookstores that sell a handful of signed books and a typical yard sale probably would not need to comply with this law.

Secondly, AB 1570 limits the rule to instances where the dealer "provides a description of that collectible as being autographed." Technically then, a certificate of authenticity is not required if the seller does not market the artwork as autographed/signed. However, dealers who primarily sell signed items probably do so because of the uniqueness the signature brings to the item. For example, a paperback book or an art print can exponentially increase in value with the addition of an autograph. For art dealers who find that they can just as easily sell the artwork without advertising it as signed, it may be worthwhile to forgo any description of the piece as signed. For many dealers of art or memorabilia, however, advertising the signature is key to the sale and compliance with AB 1570 is necessary.

Where We Go From Here

Although it is unclear how courts will interpret this law, it is certainly safer to err on the side of caution if you believe that you qualify as a "dealer" under AB 1570. This is especially so because AB 1570 creates a civil enforcement mechanism rather than relying on law enforcement. Any person who is damaged by failure to provide the certificate of authenticity can bring suit for 10 times actual damages. While it is unclear how many suits have been brought in the sports memorabilia context under §1739.7, the possibility of such a drastic penalty should force all dealers of autographed items to study this new law to better understand its requirements and implications.

Because of AB 1570's detailed requirements for the certificate, dealers should familiarize themselves with all the information that needs to be provided. To avoid executing a false certificate, dealers should attempt to verify the authenticity of the signatures on the item.

Additionally, dealers now need to be more careful on what they market as "signed." Even though plate signing or a stamp of the artist's signature might be considered "signed" in an art gallery, AB 1570 offers a critical distinction in that it only considers hand-signed signatures as legitimate. Furthermore, to address privacy concerns, when purchasing signed works from private party sellers, dealers should warn the seller that their contact information will be posted on a future certificate of authenticity. Individuals who consign their signed art masterpiece to an auction house or who sell an autographed item at a yard sale subsequently bought by a dealer may suddenly find that their name and information is listed on a certificate of authenticity.

Despite the uproar by some dealers over the potential breadth of AB 1570, the new law addresses a very legitimate concern over an industry of forgeries that some estimate to be in the neighborhood of hundreds of millions of dollars. Forged autographs not only end up disappointing the buyer of the item, it also potentially devalues legitimate autographed items. However, the problem presented by AB 1570 lies not only in the stringency of its requirements, but in the uncertainty of its application. A bill's author cannot write a bill and then seek to publicly modify it outside the legislative process. Accordingly, an unfortunate consequence of the issues presented by this new law may be a repeal, which would ignore the very real need for protection against forgeries in the autographed memorabilia arena. This brewing controversy surrounding AB 1570 demonstrates the need for legislators to not only pay attention to the problem but also to the solution.