

HOUSE BILL REPORT

ESSB 5054

As Passed House
April 15, 1993

Title: An act relating to sports collectibles.

Brief Description: Requiring the sellers of sports memorabilia to authenticate the merchandise.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Winsley and Erwin).

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DPA;
Passed House - Amended, April 15, 1993, 95-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Margaret Allen (786-7191).

Background: The hobby of collecting sports memorabilia has grown dramatically over the past 10 years, and reportedly is now a billion-dollar-a-year industry. Autographed sports items and other items believed to be authentic often command a price far in excess of the original value of the item. The sale of forged autographs and unauthentic sports collectibles is becoming a serious consumer protection issue.

To prevail in a private action under the Consumer Protection Act (CPA), a plaintiff must prove five elements: (1) an unfair or deceptive act or practice; (2) occurred in the conduct of trade or commerce; (3) having an impact on the public interest; (4) injuring the plaintiff's business or property; and (5) the injury was caused by the unfair or deceptive act. A successful plaintiff may recover actual damages, or the court may increase the award to three times the actual damages, so long as the increased award does not exceed \$10,000 in Superior Court or \$25,000 in district

court. In addition, a plaintiff may recover the costs of the lawsuit, including a reasonable attorney's fee.

A legislative declaration that a statutory violation is an unfair or deceptive act in trade or commerce satisfies the first two elements of a plaintiff's action under the CPA. Similarly, a legislative declaration that a matter affects the public interest satisfies the third element.

Summary of Bill: A dealer who sells a sports collectible for \$100 or more to a consumer, and who describes that collectible as authentic, must provide a written certificate of authenticity at the time of sale. The certificate must be in at least 10-point boldface type, dated, signed by the dealer or authorized agent, and must contain the dealer's true legal name and street address.

The certificate must also:

- (1) Describe the collectible, list the purchase price and, if the collectible is autographed, list the name of the sports personality who signed it;
- (2) Contain an express warranty of the authenticity of the collectible. The warranty must state that the dealer is required to make a full cash refund upon request within 30 days of the sale. A full cash refund is contingent upon return of the sports collectible in the same condition as sold, along with the certificate of authenticity;
- (3) If the description claims the collectible is autographed, state the place and date where the personality autographed the collectible, if known. If either the place or date, or both, are unknown, the certificate must contain an explicit statement to that effect; and
- (4) Specify whether the collectible is offered as one of a limited edition and, if so, the size of the edition, the size of prior or anticipated future editions, and how the edition and the collectible are numbered.

A dealer cannot describe a collectible as autographed if it is signed by someone other than the sports personality whose name is on it. A dealer must display a conspicuous sign, in close proximity to the merchandise, stating the consumer is entitled to receive a written certificate of authenticity. Mail order and telephone order businesses must disclose this same information in their advertisements.

A first violation of these provisions, and any subsequent violation committed more than five years after a previous violation, is a misdemeanor. Any violation committed within five years of a previous violation is a gross misdemeanor.

However, a dealer who in good faith certifies a collectible as being autographed or authentic is not in violation of the provisions.

The Legislature finds the practices covered by the act to be matters vitally affecting the public interest. A violation of the act constitutes an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the CPA.

Fiscal Note: Not requested.

Effective Date: The bill takes effect July 1, 1995.

Testimony For: None.

Testimony Against: None.

Witnesses: None.