

1 HB395  
2 203129-2  
3 By Representative Shaver  
4 RFD: Commerce and Small Business  
5 First Read: 05-MAR-20

8 SYNOPSIS: Current law does not require a dealer of  
9 autographed collectibles, historical artifacts, or  
10 memorabilia to furnish an express warranty of  
11 authenticity to a purchaser when an autographed  
12 collectible, historical artifact, or piece of  
13 memorabilia sold is represented to be authentic.

14 This bill would require any dealer of  
15 autographed collectibles, historical artifacts, or  
16 memorabilia to furnish an express warranty to the  
17 consumer at the time of sale. A dealer would be  
18 required to maintain a copy of this express  
19 warranty for 10 years following the date of sale.

20 This bill would also require a dealer to  
21 maintain records indicating whether an autographed  
22 collectible, historical artifact, or piece of  
23 memorabilia was obtained from a third party, as  
24 well as sufficient records to make contact with  
25 that individual.

26 This bill would also require a dealer, an  
27 auctioneer, and a vendor at a trade show to display

1 specified signage regarding the express warranty  
2 requirements for autographed collectibles,  
3 historical artifacts, and memorabilia.

4 The bill would also grant a consumer the  
5 right to cancel the contract for the purchase of an  
6 autographed collectible, historical artifact, or  
7 piece of memorabilia represented by a dealer as  
8 authentic until at least midnight of the third day  
9 after the day on which the consumer purchased the  
10 item, except when the item is purchased at a public  
11 auction or trade show, or as part of a trade or  
12 barter, as specified. The bill would specify  
13 procedures and conditions of the cancellation. The  
14 bill would require the three-day right of return,  
15 except as specified, to be included in the sign and  
16 the onscreen message a dealer is required to  
17 display.

18 This bill would also provide for specified  
19 civil penalties in a civil action against the  
20 dealer for failure to comply with the provisions  
21 regarding express warranties.

22  
23 A BILL  
24 TO BE ENTITLED  
25 AN ACT  
26

1           Relating to autographed collectibles, historical  
2 artifacts, and memorabilia; to require any dealer of  
3 autographed collectibles, historical artifacts, or memorabilia  
4 to furnish an express warranty to the consumer at the time of  
5 sale; to allow a consumer to cancel the purchase contract for  
6 an autographed collectible, historical artifact, or piece of  
7 memorabilia for a specified period of time; and to provide for  
8 civil penalties for certain violations.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10           Section 1. As used in this act, the following terms  
11 shall have the following meanings:

12           (1) AUCTIONEER. Any individual who is engaged in, or  
13 who, by advertising or otherwise, holds himself or herself out  
14 as being available to engage in, the calling for, the  
15 recognition of, and the acceptance of, offers for the purchase  
16 of goods at an auction.

17           (2) AUTOGRAPHED COLLECTIBLE. A sports item or  
18 entertainment media item bearing the signature of a particular  
19 person that is sold or offered for sale for fifty dollars  
20 (\$50) or more, excluding sales tax and shipping fees, when the  
21 dealer offers the signed item at a higher price than the  
22 dealer would charge for a comparable item without the  
23 signature.

24           (3) CONSUMER. A natural person who purchases an  
25 autographed collectible from a dealer for personal, family, or  
26 household purposes. The term includes a prospective purchaser  
27 meeting these criteria.

1           (4) DEALER. A person who is in the business of  
2 selling or offering for sale autographed collectibles and has  
3 sold three or more autographed collectibles in the preceding  
4 12 months. The term includes an auctioneer that sells  
5 autographed collectibles at a public auction and a person  
6 engaged in a mail-order, telephone-order, online, or  
7 television business for the sale of autographed collectibles.  
8 The term does not include any of the following:

9           1. A pawnbroker that acquired the autographed  
10 collectible through a foreclosure on a collateral loan,  
11 provided that the pawnbroker does not hold himself or herself  
12 out as having knowledge or skill peculiar to autographed  
13 collectibles.

14           2. The person who autographed the collectible.

15           (5) ENTERTAINMENT MEDIA ITEM. An item related to  
16 music, television, and films, including, but not limited to, a  
17 picture, photo, record, compact disc, digital video disc,  
18 ticket, program, playbill, clothing, hat, poster, toy, plaque,  
19 trading card, musical instrument, or other entertainment  
20 memorabilia.

21           (6) HISTORICAL ARTIFACT. An object, such as a tool,  
22 or the remains of one, such as a shard of pottery, or an  
23 historical writing, manuscript, or document, characteristic of  
24 an earlier time or cultural stage, valued for its historical  
25 significance and authenticity.

26           (7) LIMITED EDITION. An autographed collectible that  
27 meets all of the following requirements:

1 a. A person has produced a specific quantity of an  
2 autographed collectible and placed it on the open market.

3 b. The person has posted a notice, at its primary  
4 place of business, that it will provide any consumer, upon  
5 request, with a copy of a notice that states the exact number  
6 of an autographed collectible produced in that series of  
7 limited editions.

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

13 d. The sequence number of the autographed  
14 collectible and the number of the total quantity produced in  
15 the limited edition are printed on the autographed  
16 collectible.

17 (8) MEMORABILIA. Objects kept or collected because  
18 of their historical interest, particularly those deriving  
19 value from their connection to a particular memorable person  
20 or event, and also deriving value from authenticity.

21 (9) PERSON. Any natural person, partnership,  
22 corporation, limited liability company, company, trust,  
23 association, or other entity, however organized.

24 (10) REPRESENTATION. Any oral or written  
25 representation, including, but not limited to, a  
26 representation in an advertisement, brochure, catalog, flyer,  
27 invoice, sign, radio or television broadcast, online

1 communication, Internet web page, email, or other commercial  
2 or promotional material.

3 (11) SPORTS ITEM. A photograph, ticket, plaque,  
4 sports program, trading card, item of sports equipment or  
5 clothing, or other sports memorabilia.

6 Section 2. (a) A dealer who makes a representation  
7 to a consumer that an historical artifact or piece of  
8 memorabilia is authentic, or that the signature on an  
9 autographed collectible is the authentic signature of a  
10 particular individual in that individual's own hand, shall  
11 furnish an express warranty to the consumer at the time of  
12 sale. The express warranty, which may be included in the bill  
13 of sale or invoice, shall meet all of the following criteria:

14 (1) Is signed by the dealer or the dealer's  
15 authorized agent, and contains the dealer's true legal name  
16 and business street address.

17 (2) Specifies the date of sale and the purchase  
18 price.

19 (3) Describes the item and specifies the name of the  
20 person who autographed it or with whom the item is associated.

21 (4) Expressly warrants that the autographed  
22 collectible, historical artifact, or memorabilia is authentic,  
23 and that the warranty is conclusively presumed to be part of  
24 the bargain. The warranty shall not be negated or limited by  
25 reason of the lack of words such as "warranty" or "guarantee"  
26 or because the dealer does not have a specific intent or  
27 authorization to make the warranty or because any statement

1 relevant to the autographed collectible, historical artifact,  
2 or memorabilia is, purports to be, or is capable of being,  
3 merely the dealer's opinion.

4 (5) If the autographed collectible, historical  
5 artifact, or memorabilia is offered as one of a limited  
6 edition, specifies both how the item and edition are numbered  
7 and the size of the edition and the size of any prior or  
8 anticipated future edition, if known by the dealer. If the  
9 size of the edition and the size of any prior or anticipated  
10 future edition is not known, the warranty shall contain an  
11 explicit statement to that effect.

12 (6) Indicates whether the dealer is surety bonded or  
13 is otherwise insured to protect the consumer against errors  
14 and omissions of the dealer and, if bonded or insured,  
15 provides proof thereof.

16 (7) Indicates, if the item is an autographed  
17 collectible, that the item was autographed in the presence of  
18 the dealer, and any proof thereof, and, if known, specifies  
19 the date and location of, and the name of a witness to, the  
20 autograph signing.

21 (8) Identifies all information upon which the dealer  
22 relied when making the representation that the item is  
23 authentic.

24 (9) Indicates an identifying serial number that  
25 corresponds to an identifying number printed on the item, if  
26 any.



1           (10) Indicates whether the item was obtained or  
2 purchased from a third party.

3           (b) The dealer shall retain a record of the name and  
4 address of the third party, as described in subdivision (10)  
5 of subsection (b). The third-party information shall be  
6 discoverable during a civil dispute. However, nothing in this  
7 subsection prohibits a party from objecting to a discovery  
8 request on the grounds of a right to privacy. This third-party  
9 information shall be kept on file by the dealer for seven  
10 years.

11           (c) (1) In addition to any other right or remedy  
12 provided under existing law, including, but not limited to,  
13 any right and remedy provided under contract law, a consumer  
14 shall have the right to cancel a contract for the purchase of  
15 an autographed collectible, historical artifact, or piece of  
16 memorabilia represented by a dealer as authentic until  
17 midnight of the third day after the day on which the consumer  
18 purchased that item. Notice of the cancellation may be  
19 provided in person or in a written or electronic form, and is  
20 deemed effective once communicated or sent. The item shall be  
21 returned to the dealer within 30 days of the sale in the same  
22 condition in which it was sold, the cost of which shall be  
23 borne by the consumer. The price paid by the consumer shall be  
24 refunded within 10 days of receipt of the returned autographed  
25 collectible. Nothing in this section prevents the parties from  
26 agreeing to cancel a contract after midnight of the third day  
27 after the day on which the consumer purchases the item.

1           (2) A dealer may not display or offer for sale an  
2 autographed collectible, historical artifact, or piece of  
3 memorabilia in this state unless, at the location where the  
4 item is offered for sale, whether on-site or in a catalogue or  
5 on a website, there is a conspicuous sign that reads as  
6 follows: "SALE OF AUTOGRAPHED COLLECTIBLES, HISTORICAL  
7 ARTIFACTS, OR MEMORABILIA: AS REQUIRED BY LAW, A DEALER WHO  
8 SELLS TO A CONSUMER ANY COLLECTIBLE DESCRIBED AS BEING  
9 AUTOGRAPHED, OR AN HISTORICAL ARTIFACT OR A PIECE OF  
10 MEMORABILIA DESCRIBED AS BEING AUTHENTIC, MUST PROVIDE A  
11 WRITTEN EXPRESS WARRANTY AT THE TIME OF SALE AND A THREE-DAY  
12 RIGHT OF RETURN. THIS DEALER MUST BE SURETY BONDED OR  
13 OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY  
14 AUTOGRAPHED COLLECTIBLE, HISTORICAL ARTIFACT, OR MEMORABILIA  
15 SOLD BY THIS DEALER."

16           (3) This subsection does not apply to autographed  
17 items, historical artifacts, or memorabilia:

- 18           a. Sold by an auctioneer at auction.
- 19           b. Purchased by barter or trade of other items.
- 20           c. Sold at a trade show.
- 21           d. Sold by one dealer to another dealer.

22           (d) An auctioneer selling at auction or dealer  
23 selling at a trade show in the state may not display or offer  
24 for sale an autographed collectible, historical artifact, or  
25 memorabilia unless, at the location where the item is offered  
26 for sale, whether on-site or in a catalogue or on a website,  
27 there is a conspicuous sign that reads as follows: "SALE OF

1 AUTOGRAPHED COLLECTIBLES, HISTORICAL ARTIFACTS, OR  
2 MEMORABILIA: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A  
3 CONSUMER ANY COLLECTIBLE DESCRIBED AS BEING AUTOGRAPHED, OR  
4 ANY HISTORICAL ARTIFACT OR PIECE OF MEMORABILIA DESCRIBED AS  
5 BEING AUTHENTIC, MUST PROVIDE A WRITTEN EXPRESS WARRANTY AT  
6 THE TIME OF SALE. THIS DEALER MUST BE SURETY BONDED OR  
7 OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY  
8 AUTOGRAPHED COLLECTIBLE, HISTORICAL ARTIFACT, OR MEMORABILIA  
9 SOLD BY THIS DEALER."

10 (e) Any dealer engaged in a mail-order,  
11 telephone-order, or online business for the sale of  
12 autographed collectibles, historical artifacts, or memorabilia  
13 shall do all of the following:

14 (1) Include the disclosure specified in subsection  
15 (e), in type of conspicuous size, in any written advertisement  
16 relating to an autographed collectible, historical artifact,  
17 or piece of memorabilia.

18 (2) Include in each television or online  
19 advertisement relating to an autographed collectible,  
20 historical artifact, or piece of memorabilia the following  
21 written onscreen message, which shall be prominently  
22 displayed, easily readable, and clearly visible for no less  
23 than five seconds, and which shall be repeated for five  
24 seconds once during each four-minute segment of the  
25 advertisement following the initial four minutes: "A written  
26 express warranty is provided with each autographed  
27 collectible, historical artifact, or piece of memorabilia as

1 required by law. This dealer must be surety bonded or  
2 otherwise insured to ensure the authenticity of any  
3 autographed collectible, historical artifact, or piece of  
4 memorabilia sold by this dealer."

5 (3) Include as part of the oral message of each  
6 radio advertisement for an autographed collectible, historical  
7 artifact, or piece of memorabilia the disclosure specified in  
8 subsection (e).

9 (f) In a civil action brought by a consumer against  
10 a dealer, the following shall apply:

11 (1) A dealer who fails to provide an express  
12 warranty, or provides an express warranty that does not comply  
13 with all of the requirements of subsection (b), shall be  
14 liable for actual damages resulting from the inadequate  
15 warranty, payable to the consumer.

16 (2) A dealer who provides a false express warranty  
17 that injures the consumer shall be liable for actual damages  
18 resulting from the false warranty, payable to the consumer.

19 (3) A dealer who provides a false express warranty  
20 and whose act or omission amounts to gross negligence that  
21 injures the consumer, shall be subject to a civil penalty of  
22 three thousand dollars (\$3,000), or an amount equal to three  
23 times actual damages, whichever is greater, payable to the  
24 consumer.

25 (4) A dealer who knowingly provides a false express  
26 warranty, or knowingly fails to provide an express warranty  
27 required by this section, and whose act or omission results in

1 an injury to a consumer shall be subject to a civil penalty of  
2 five thousand dollars (\$5,000), or an amount equal to five  
3 times actual damages, whichever is greater, payable to the  
4 consumer.

5 (5) A consumer may recover court costs, reasonable  
6 attorney's fees, interest, and expert witness fees, if  
7 applicable, pursuant to an action described in subdivisions  
8 (2) to (4), inclusive.

9 (6) The remedies specified in this section are in  
10 addition to, and not in lieu of, any other remedy that may be  
11 provided by law. The court may award punitive damages based on  
12 the egregiousness of the dealer's conduct.

13 (g) A dealer must be surety bonded or otherwise  
14 insured for purposes of indemnification against errors and  
15 omissions arising from the authentication, sale, or resale of  
16 autographed collectibles, historical artifacts, or  
17 memorabilia.

18 Section 3. This act shall become effective 180 days  
19 following its passage and approval by the Governor, or its  
20 otherwise becoming law.