

INTERNET AUCTIONS

The following are some ideas, taken from other states, of internet auction proceedings. At the present time, these are the following references to internet auctions in the Louisiana statute.

LSA-R.S. 37:3103. DEFINITIONS

3.1

Auction house, "auction company," and "auction business" shall not mean an entity which sells property through an Internet-based trading platform unless such entity's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

(4) . . .

. "Auctioneer" shall not mean a person who sells property through an Internet-based trading platform unless such person's activities constitute an "auction" as defined in Paragraph (3) of this Subsection.

Paragraph three of Section 3103 defines an auction as follows:

"Auction" means the sale by competitive bid of any property which sale consists of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid.

We therefore have interpreted the change in definition of auction to not include "timed" auctions. These are auctions which end on a specific day and a specific time, because our definition of auction indicates that the end of a bid is an acceptance of the bid, not the time it took to reach that bid.

If we change our statute, these are some alternatives.

1. We can keep the same definition, and offer a rule as follows:

The definition of auction shall include auctions on online platforms which can be extended past a specific ending time by the platform.

This rule would allow the board to regulate online auctions which say there is a specific ending time which can be extended if there is activity on the object sold being conducted at the specified ending time.

2. We can regulate all online auctions by amending our statute and remove those definitions limiting the definition of auction house and auction stated above. We would add a provision to the auction definition to include both live and online auctions, simulcast or not.

“Auction” means the sale by competitive bid by means of a verbal exchange, regular mail, telecommunications, the internet of any property either which sale consists of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid. The term "auction" or "sale at auction" includes:

- (i) live auctions;
- (ii) online auctions;
- (iii) real-time auctions;
- (iv) extended auctions;
- (v) any similar such events as may be devised with the development of technology; and
- (vi) any combination of the foregoing.

3. **We can license Trading Assistants separately. I do not recommend this. I am not sure that this is what the board wants to do. This would require licensing of those who do not call auctions but do take items for consignment to be sold online. This would be difficult to enforce without the cooperation of internet platforms. If we did, this is the statute we would pass.**

This is Pennsylvania’s statute.

Section 5.1. Registration of trading assistants and trading assistant companies.

(a) Requirement for registration.--It shall be unlawful for an individual to act as a trading assistant, or for any legally recognized entity to act as a trading assistant company, without either first registering with or obtaining licensure from the board. A legally recognized entity conducting business as a trading assistant must register as a trading assistant company even though a member or officer is registered as a trading assistant. Registration is required on a biennial basis, and renewal shall be due on the last day of February of each odd-numbered year.

(b) Application.--Application for registration under this section shall include the following:

- (1) The name of the applicant, the business and the physical location where the business will be conducted.
- (2) The date the applicant will begin accepting goods for sale through an online trading assistant consignment sale transaction.
- (3) The applicant's Pennsylvania tax identification number.
- (4) The applicant's e-mail address.

(4) Licensees under this act shall be authorized to conduct auctions at any venue within this Commonwealth, including on-site auctions and auctions held at auction houses and temporary venues, and by any method of conducting the sale, including live auctions and online auctions and auctions that are conducted live and online contemporaneously, whether real-time auctions or extended auctions.

4. **Finally, we can license platforms themselves. The following is a statute from Illinois which does that. I do not know if we have the staff to really enforce this with all of**

the platforms.

(1) "Internet Auction Listing Service" means a website on the Internet, or other interactive computer service that is designed to allow or advertised as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an on-line bid submission process using that website or interactive computer service and that does not examine, set the price, or prepare the description of the personal property or service to be offered, or in any way utilize the services of a natural person as an auctioneer.

(2) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

(b) It is unlawful for any person, corporation, limited liability company, partnership, or other entity to provide an Internet auction listing service in the State of Illinois for compensation without being registered with the Department when:

(1) the person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service is located in the State of Illinois;

(2) the prospective seller or seller, prospective lessor or lessor, or prospective purchaser or purchaser is located in the State of Illinois and is required to agree to terms with the person, corporation, limited liability company, partnership, or other entity providing the Internet auction listing service, no matter where that person, corporation, limited liability company, partnership, or other entity is located; or

(3) the personal property or services offered for sale or lease are located or will be provided in the State of Illinois.

(c) Any person, corporation, limited liability company, partnership, or other entity that provides an Internet auction listing service in the State of Illinois for compensation under any of the circumstances listed in subsection (b) shall register with the Department on forms provided by the Department accompanied by the required fee as provided by rule. Such registration shall include information as required by the Department and established by rule as the Department deems necessary to enable users of the Internet auction listing service in Illinois to identify the entity providing the service and to seek redress or further information from such entity. The fee shall be sufficient to cover the reasonable costs of the Department in administering and enforcing the provisions of this Section. The registrant shall be required to certify:

(1) that the registrant does not act as the agent of users who sell items on its website, and acts only as a venue for user transactions;

(2) that the registrant requires sellers and bidders to register with the website and provide their name, address, telephone number and e-mail address;

(3) that the registrant retains such information for a period of at least 2 years;

(4) that the registrant retains transactional information consisting of at least seller identification, high bidder identification, and item sold for at least 2 years from the close of a transaction, and has a mechanism to identify all transactions involving a particular seller or buyer;

(5) that the registrant has a mechanism to receive complaints or inquiries from users;

(6) that the registrant adopts and reasonably implements a policy of suspending, in appropriate circumstances, the accounts of users who, based on the registrant's investigation, are

proven to have engaged in a pattern of activity that appears to be deliberately designed to defraud consumers on the registrant's website; and

(7) that the registrant will comply with the Department and law enforcement requests for stored data in its possession, subject to the requirements of applicable law.

(d) The Department may refuse to accept a registration which is incomplete or not accompanied by the required fee. The Department may impose a civil penalty not to exceed \$10,000 upon any Internet auction listing service that intentionally fails to register as required by this Section, and may impose such penalty or revoke, suspend, or place on probation or administrative supervision the registration of any Internet auction listing service that:

(1) intentionally makes a false or fraudulent material representation or material misstatement or misrepresentation to the Department in connection with its registration, including in the certification required under subsection (c);

(2) is convicted of any crime, an essential element of which is dishonesty, fraud, larceny, embezzlement, or obtaining money, property, or credit by false pretenses or by means of a confidence game; or is convicted in this or another state of a crime that is a felony under the laws of this State; or is convicted of a felony in a federal court;

(3) is adjudged to be a person under legal disability or subject to involuntary admission or to meet the standard for judicial admission as provided in the Mental Health and Developmental Disabilities Code;

(4) has been subject to discipline by another state, the District of Columbia, a territory of the United States, a foreign nation, a governmental agency, or any other entity authorized to impose discipline if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline set forth in this Section or for failing to report to the Department, within 30 days, any adverse final action taken against the registrant by any other licensing or registering jurisdiction, government agency, law enforcement agency, or court, or liability for conduct that would constitute grounds for action as set forth in this Section;

(5) fails to make available to the Department personnel during normal business hours all records and related documents maintained in connection with the activities subject to registration under this Section;

(6) makes or files false records or reports in connection with activities subject to registration, including but not limited to false records or reports filed with State agencies;

(7) fails to provide information within 30 days in response to a written request made by the Department to a person designated in the registration for receipt of such requests; or

(8) fails to perform any act or procedure described in subsection (c) of this Section.

(e) Registrations issued pursuant to this Section shall be defined by rule. A registrant shall submit a renewal application to the Department on forms provided by the Department along with the required fee as established by rule.

(f) Operating an Internet auction listing service under any of the circumstances listed in subsection (b) without being currently registered under this Section is declared to be adverse to the public welfare, to constitute a public nuisance, and to cause irreparable harm to the public welfare. The Secretary, the Attorney General of the State of Illinois, the State's Attorney of any county in the State, or any other person may maintain an action and apply for injunctive relief in

any circuit court to enjoin the person or entity from engaging in such practice.

(g) The provisions of Sections 20-25, 20-30, 20-35, 20-40, 20-50, 20-55, 20-60 and 20-75 of this Act shall apply to any actions of the Department exercising its authority under subsection (d) as if a person required to register under this Section were a person holding or claiming to hold a license under this Act.

(h) The Department shall have the authority to adopt such rules as may be necessary to implement or interpret the provisions of this Section.

(Source: P.A. 95-572, eff. 6-1-08; 96-730, eff. 8-25-09.)