

Leslie L. Kacer

From: Postmaster [REDACTED]
Sent: Wednesday, May 14, 2014 12:44 PM
To: HB3038 Interim Charge
Subject: HB3038

Stupid law. E-commerce and the feds will sue Im sure.

Leslie L. Kacer

From: ADMIN [REDACTED]
Sent: Wednesday, May 14, 2014 12:47 PM
To: HB3038 Interim Charge

Perry got paid off by the TAA and will not hold in court. I guess your looking for long legal battles. No one wants this law it is e-commerce why would anyone want to do this is beyond me. Most of us auctioneers depend on the ebayers to buy from our auctions so they can make money lets cut our own throats, Drop the crap

Leslie L. Kacer

From: WWAC Inc. [REDACTED]
Sent: Wednesday, May 14, 2014 12:48 PM
To: HB3038 Interim Charge
Subject: TEXAS LAW?

GET REAL... WHAT A JOKE

Administrator

World Wide Auction Inc

State Of The Art Auction Technologies

Your Auction Team

World Wide Auction Group # 972-672-8725

<http://www.worldwideauctiongroup.com>

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Leslie L. Kacer

From: [REDACTED]
Sent: Wednesday, May 14, 2014 1:12 PM
To: HB3038 Interim Charge
Subject: Input to Questions

1. Yes, all online auctions should require licensing and responsibility to the consumer and consignor just as live auctioneers are held responsible. The potential for dishonesty with online auctions is even greater.
2. Same answer as #1
3. Yes, because the consumer still is at risk of being treated dishonestly.
4. The owner and/or person managing and conducting auctions.
5. An online auction is not bound by state lines therefore it should be defined as being conducted in all states that it is available to bidders.
6. In order to protect consignors and bidders, the law should require online auctions to abide by laws just as they do for onsite auctions now.

Leslie L. Kacer

From: Col Glenn Larson [REDACTED]
Sent: Wednesday, May 14, 2014 1:32 PM
To: HB3038 Interim Charge
Subject: House Bill 3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy?

I believe all competitive bids sales in Texas, regardless of where the buyer is located, whether online or onsite, should require a Texas Auctioneer's License.

Why?

By making sure the Auctioneer is licensed, it provides protection and recourse for the buyer and helps keep non-licensed persons from taking business away from properly licensed auctioneers.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas?

See answer above.

Why?

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property?

Yes.

Why?

To keep unlicensed persons from purchasing property and then re-selling it as personal property in order to circumvent the laws and requirements of The State of Texas regarding Auctioneers.

4. Which employees at an auction company should be required to hold a Texas auctioneer license?

Anyone calling bids should be required to hold a valid Texas Auctioneer's License.

Why?

I don't see an advantage for anyone other than actual bid callers to be licensed.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)?

No Comment Why?

If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? No Comment Why?

Leslie L. Kacer

From: WILLIE GALE [REDACTED]
Sent: Wednesday, May 14, 2014 1:37 PM
To: HB3038 Interim Charge

Concerning (House Bill 3038 The State of Texas would be given the opportunity to have a fee indifference as opposed to other States wanting to work in Texas similar to out of State fees for those coming from Texas working in other States ,provided Texas House Bill 3030 refers to cost of applying for License to work and needful is looking into this with States looking Auctions as well there maybe some thoughts along these lines of Regulations for Bill 3038

Leslie L. Kacer

From: Mary Sampson
Sent: Wednesday, May 14, 2014 2:44 PM
To: HB3038 Interim Charge
Subject: Response to questions

1. No, this would inhibit private citizens online "auction like" selling.
2. No, this would implicate anyone selling an item via the auction process using online sites such as ebay.
3. No, private property should be sold as necessary by his rightful owner.
4. The auctioneer should hold a license and the company owner(s).
5. A sale or auction outside the state should include any item being offered for sale via bidding process. This is different from items placed on sale with a firm price.
6. Allow reexamination attempts after a six month documented re-education program. A one year period is too long and negatively impacts a person's employment potential. Furthermore, similar industries do not have the reexamination required but these other industries have the potential for a increase impact on public safety.

Leslie L. Kacer

From: Robinson, Douglas O. [REDACTED]
Sent: Wednesday, May 14, 2014 2:46 PM
To: HB3038 Interim Charge
Subject: Re: We need your input regarding House Bill 3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?
 - “Auction” websites should not be licensed, maybe a new definition created for registration, but not licensed. There is no professional standing at a podium leading a sale. These sites generally provide an electronic platform for products to be sold at a varied price with a known end time. These types of sales platforms are generally for commodities available in the general market and provide a method of savings to consumers. The sites basically match up sellers with buyers, electronically, at a benefit to both. There is more exposure for a seller and a better price for the buyer. The company providing the service is conducting business in the State and should have all tax and registrations required within the State as a business, but there is a distinct absence of a professional guiding the sales process. These businesses aren't Auction houses, they are technical search engine platforms for people to negotiate directly with one another. Extending this thought, a company selling their products or inventory in a variable price sale online, is still just a business, selling their products via a different sales method.
2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?
 - No. I presume the theory here is, that the State's control of a transaction, where one party is outside the State, could be restraint of trade. Identify what is the right thing to do with regard to whether licensing is in the best interest of Texas citizens, sellers and consumers, and apply this equally, inside and outside the State. Ultimately, if this cannot be enforced in out-of-state transaction, don't burden in-state companies with non-equitable requirements.
3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?
 - It depends. No licensing for 1 or 2 in-person private sales each year by an individual, of personal property, to the general public,. More regular in-person auctions, open to the general public, is more of a business than a garage sale and should be licensed.
 - Just like you can build your own house without being a contractor, or sell a couple cars without being an auto dealer, the average person or business conducting one or two auctions a year should Not be required to be licensed. If upon the death of my parents, I decide to sell their property in an Auction format, shouldn't I be allowed to choose the format in which I sell my personal property, especially in a free market?
 - However, if I decide to do this full-time, because I realize I'm good at marketing to the public and driving bidding competition at the time of the sale, then I need to be professionally licensed. This licensing does two things: it regulates and provides for enforcement of the individuals that are regularly interacting with the general public, and it provides for legitimacy and standardization of a regulated profession. If I'm going to have a sale and hire an auctioneer, I can verify his/her licensing.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?
 - Like other professions in the state, engineering or architecture, it is good to have the registration of professional companies that have many licensed professionals on staff. This assure requirements for tax, insurance, etc. are met. General administrative and labor workers would not need to be licensed, however, anyone at the podium, promoting products, taking bids and driving price, should be individually licensed. This is no different than hair dressers, third party inspectors, or beauticians, that have individual public contact, being individually licensed.
5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?
 - I believe the intent of this exemption is based on two of the following three items being in Texas, the property, the purchaser, and/or the physical sale event. If property in Austin is going to be auctioned, and the interested buying general public is from Austin, simply conducting the sale in Louisiana would not earn the exemption.
6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Leslie L. Kacer

From: Tim Bowers [REDACTED]
Sent: Wednesday, May 14, 2014 3:50 PM
To: HB3038 Interim Charge
Subject: Responses to proposed legislation

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

No. Any company that engages in interstate commerce should be subject to all state and federal laws. It would be overly cumbersome to require Ebay to get an auctioneers license in every state. "Ebay" is not a person anyway. This is a gray area. Perhaps the federal government should come up with an internet sales license or a uniform auctioneers license act? Perhaps the online auction companies should be required to have an auctioneers license in their primary place of business that must be recognized under a federal uniform auctioneers act? If not, some form of disclosure should be made that the online entity is not an auctioneer nor holds a license to conduct an auction and any recourse, should it be necessary, must be redressed directly to the selling entity as there are no state or federal auction laws that are required to be adhered to by said entity. Or something along those lines. There are consumer protection laws, such as the Texas DTPA, to protect buyers for misrepresentation, etc. The catch is that these entities will allege they are not making representations but merely facilitating a sale. It would be nice to conduct a business where the possibility of liability never attaches.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Yes. First, if "anyone" can conduct an online auction in this fashion without the requirement of a license, he/she would enjoy a competitive advantage over other auctioneers and auction companies who conduct live auctions and, thus, must adhere to the licensing requirements. Second, if the main focus of auctioneer education and legislation is to establish integrity, ethics, morality and standardized terminology along with accountability, then why allow a loophole for Texas online sellers to escape this responsibility?

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Not in all situations. I can see where a license might be required in situations where taxes must be collected and sent to the appropriate entities or where there is a higher than usual possibility of misrepresentation. However, an "individual" might have a due process argument along the lines of an unreasonable requirement that would restrain him/her from being able to sell personal property.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

The auctioneer only. He is responsible for his employees actions, just as in any agency situation. Any other requirement is simply a money grab.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

It has to be any auction where the auction company/auctioneer is/are conducting the sale from a location outside of Texas. If they pass a federal uniform auctioneers act and bring all states up to the same standards, it would take much of the relevancy of the definition away.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

I have been a licensed attorney since 1993. I am required to take 15 hours of CLE annually. Yet the Texas Auction Law requires me to also take Auctioneer CE. Most of it is repetitive information that I learned in my first year of law school. It is a waste of my time. So, I would change the requirement of Auctioneer CE for licensed attorneys who take 15 hours of CLE in order to maintain their Texas Bar License.

Tim Bowers

President and CEO



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<http://www.linkedin.com/in/bowerstim>

Leslie L. Kacer

From: Michele Hammer [REDACTED]
Sent: Wednesday, May 14, 2014 8:02 PM
To: HB3038 Interim Charge
Subject: HB3038 Reponses to Questions

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? **I would say no to eBay and similar sites in which any person can list an item for bid. However, I feel strongly that TX auctioneers should have a valid license for other timed and live bidding simulcast events such as AuctionZip, Proxibid. Live Auctioneers and Bidopia. Those sites ask for your license number and are more in line with live auctions. It would be unfair to require all Texans to have a license just to list an item on eBay.**
2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why? **Yes, it upholds the standards of professional auctioneering. If just anybody can hold an online auction, then what's the value of the license, going to auction school and continuing education? I don't see why it matters if the bidder is a Texas resident or not though. I like the fact that Texas requires licensure. I've ran into many people that want to open an "auction business" and they have no idea of the laws much less adhere to the TDLR regulations.**
3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why? **Yes. With as many people that buy out storage units and it then becomes their property, they could potentially hold an auction at any time. By requiring the sale to be held by a licensed auctioneer it prevents this from happening. They can hold garage sales all they want, but to enable them to hold auctions negates the value of actually being licensed. Again, what's the point of even getting a license if any Tom, Dick or Harry can simply do it without one...online or live!**
4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why? **The auctioneer and any others that perform the act of bid calling.**
5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why? **Any sale not held in the state of Texas.**
6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why? **Make it harder to obtain a license so that those of us that are licensed are not as numerous. If it's too easy or looks like easy money, it may attract "unethical" people. Also, I know of an auctioneer currently practicing without a license due to it being suspended by TDLR. Who is stopping him. He acts like he can't be touched so I'm left to wonder if the board or investigators check for auctioneers that are practicing with suspended/expired licenses.**

Thank you for asking for our input.

Michele Hammer
Hammer Down Auctions
TDLR 16145

Leslie L. Kacer

From: David Skains [REDACTED]
Sent: Thursday, May 15, 2014 8:34 AM
To: HB3038 Interim Charge

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

When auctioning off property (selling by competitive bids) which belongs to anyone other than than the person asking for or receiving the bid, then that person is acting as an auctioneer and should be a licensed auctioneer in the state of Texas if the ANY of the parties involved in the transaction reside in the state of Texas. The purpose of our auction laws are to protect the buyers and sellers. I would carry this law even further, to include those who arrange or hold garage sales for other people. These people do not charge sales tax, are not required to have a tax identification number and once they make their false promises can legally rob the sellers of their estates.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why? Yes, if either party involved in the transaction resides in Texas, then Texas law should be applied. The laws are in-acted to protect both buyers and sellers. Also, this provides additional legal support for the paying of sales tax to the state of Texas.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why? Yes, for the protection of the buyer against all the potential wrongs that can happen at an auction, shill bidders, not publishing buyer premiums, and not paying sales tax. Also, at many of these auctions the sellers allows someone else to call the bids or allows others to put property in their auction.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why? The owner of the auction house and the auctioneer. The owner should be required to know all the auctioneer laws for the state of Texas in order to abide by them, as should the auctioneer. However, in a case where the owner is unable to attend his own auction (illness, death in the family or his own death) the auction of the sellers property has been advertised and set up is done, the auction should be allowed to continue as long as the auctioneer(s) are licensed.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

There are three changes that come to mind.

1. Require "tag sellers" also called "estate sellers" being those who sell estates in a garage sale type sale to hold a license and be held to the same standards as auctioneers. They are not even required to hold a tax id number, but yet, they charge sales tax. They have the advantage of lying to sellers as to what the prices items will bring, but when they don't bring those prices, there is no recourse for the seller. If an auctioneer tells you a clock is going to bring \$1,200.00 it better bring

\$1,200.00 or he is held accountable, whereas the tag seller can promise the moon, thereby ruining the auction business, but deliver nothing. They have shill buyers that come in and purchase the best items at a "negotiated" price, and those items end up in their own store. Since they do allow negotiating the price, is that not very similar to bidding?

2. Allowing government worker to hold auction of confiscated or surplus items. This would include the county courthouse step auctions of property confiscated for taxes. Does a licensed auctioneer have more ability to bring a higher price for an item than the local sheriff? It is what we do for a living. By using a government employee the greater potential of the sale price is not being realized. Also, by allowing an auctioneer to do these sales increases jobs in the state of Texas.

3. Require a Texas auctioneer license be required for any person hold a auction of their own property in order to protect the buyer and the state.

Leslie L. Kacer

From: [REDACTED]
Sent: Thursday, May 15, 2014 4:43 PM
To: HB3038 Interim Charge

Leslie L. Kacer

From: [REDACTED]
Sent: Thursday, May 15, 2014 6:03 PM
To: HB3038 Interim Charge

My name is Mark Mancill. I reside in Garrison, Texas and held an associate auctioneer license 16969 From July 11, 2011 until House Bill 3038 repealed my efforts. My wife and myself are both armed forces veterans. I still write tickets for an auction house and could call if afforded the license that was grasped away from me in the 11th hour. I don't know why there was no choice to Grandfather Clause this bill. I acted in good faith to acquire my license. I had called in at least 3 times the auctions required. I completed every task on the list. I should have been able to request a license and receive it. The state of Texas expected monies from me to hold a license that they subsequently took away for no reason. It required me to pay money for 6 hour recurring training and let me travel 10 counties, many times at no monetary gain, to learn the business. I have attempted twice to attend auctioneer schools only to have both classes cancelled. This whole process is a travesty to me. I earned my way in and had the door closed in my face. There is no excuse! I spoke with Doc Anderson who authored the bill. He told me that it changed during the process through no fault of his own. I have a personal friend who works for a state representative and I know that some of the information that was given to me by Mr Anderson were at best half-truths. So now the state of Texas is lying to me too. I have a job I have to be at that requires me to be available to it. This was the reason for the associate program with me. You are protecting the interests of a few at the expense of many. Some of these people are not representative of the very core of what they say. Honorable...give me a break! The only standard is do unto others before they do to you. I'm gonna tell you now...I will repay says the Lord God Almighty. Yours is coming.

As far as Ebay is concerned....they govern their auctions and they also afford buy it now which doesn't constitute anything remotely near auction. It is transfer of property for a listed price. It is a sale. To intercede in their business is not your business. We see what you are capable of already. You want money that doesn't belong to you. You want to protect the few at the expense of many more. Ridiculous!

An auction is an auction if it takes place in the state of Texas and is attended by human beings taking and giving live bids. Simple.

There is no reason to prevent a person from selling their own property if they choose. Like I said, you want more of the pie. People selling things for charity is another thing that should be left alone.

I am awaiting the response of the next session to fix what has been taken from me without cause and then I will be contacting the media. I'm doing my homework. I'm angry because I have every right to be. If what happened to me happened to you, you would be too. I like to compare it this way...If your daughter or son were attending the University of Texas and getting a degree of their choice only to come to the last semester and be told we don't offer the one course you need for completion anymore and we can't let you transfer any credits elsewhere, so you will have to go back two years and take all this other stuff to qualify for your degree, imagine how angry you'd be. I spent time, money, and effort coming to the dead end you threw in my way. Shameful!

Leslie L. Kacer

From: Edward Rojas [REDACTED]
Sent: Friday, May 16, 2014 12:16 PM
To: HB3038 Interim Charge

I took the exam and thiers alot questions in the exam that they are not even in study guide.

Leslie L. Kacer

From: Everett Wilkie [REDACTED]
Sent: Friday, May 16, 2014 9:23 PM
To: HB3038 Interim Charge

I really believe sincerely that the associate auctioneer program should be reinstated. I have no idea why it was taken away as a path to becoming an auctioneer. In the case of the auction house for which I work, the change has cost three people their jobs with little chance of getting them back and leaves only one auctioneer to call all the auctions.

Best,
Everett Wilkie
PO Box 11
Bluffton, TX 78607
717-419-9419 (cell)
[REDACTED]

Leslie L. Kacer

From: Rudy Mayer [REDACTED]
Sent: Monday, May 19, 2014 7:29 PM
To: HB3038 Interim Charge
Subject: comments as requested

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy?
Why? YES.....First of all the license promotes and mandates a certain standard and auctioneers are held to that standard not only by law but association with the Texas Auctioneer's Association. Generally speaking it does not take long for an unethical auctioneer to find his/her self "on the road to out of business". A while back TDLR made MCE mandatory. Online sites unless promoted by a licensed Texas Auctioneer have no criteria on standards other than their own and no mandate for education. Fraud in many cases is much more prevalent due to an "anything goes" principal than in the "licensed auction" world. Licensing will regulate and level the playing field and make it fair for all, for not only present licensees but participants as well. The only other fair solution would be to abolish all licenses, perish the thought!

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why? YES, this is no different than is the auction was conducted via the conventional auction method, live and on site.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why? NO, while it may be recommended that a person employ a professional, it is my stance that an individual still owns his/her own goods and had the God given right to dispose of them and he/she pleases; however the second these items become comingled with those of others, the license should come into play. Now if this event involves using the internet method wherein the owner is removed from the actual sale of the property and the format for such auction is via the internet, the provider of said internet service should hold a license. Yes, this includes entities such as Ebay.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why? The Auctioneer meaning the person responsible for the overall operation of the auction and any other individual calling incremented bids.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why? I define it as no different that if conducted within the boundries of the State of Texas. An auction is an auction. I do believe that that auction event should conform to the laws and criteria of that state. If it online, it should conform to the state in which it is offered from and the state in which it is being sold in. If an online company wants to do business in Texas, then it should hold a Texas Auctioneer License, unless it is providing its service thru licensed Texas Auctioneer, ie; Proxibid, Equipment Facts

6.If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why? It would appear that auctioneers are well regulated already, however the law needs also to put penalties on defaulting bidders. With the increase in the online bidder market, defaulting bidders are becoming more and more frequent, and there needs to be legal ramification on hand for the auctioneer professionals to draw on to reinforce collection. Its not like a conventional sale where there is only one buyer. In most cases if the high bidder did not buy, the backup bidder would have, but after the auction is over and the bidder does not pay, the back up bidder option is long gone and the seller and auctioneer are left with no recourse/ no money and empty pockets. Bidders are generally instructed to look, check and examine before bidding, and merchandise is sold as-is-where-is with no warranty expressed or implied. In my opinion, a bidder that refuses to pay is guilty of fraud, because he/she has defrauded the seller and the auctioneer from monies that he/she agreed to pay; furthermore, a sale would have usually occurred had the defaulting bidder not bid and the backup bidder won the item. In example, if the high bidder won an item for \$10,000.00 and refuses to pay, The backup bidder was a \$9,750.00. In my opinion, the high bidder default is the full bid amount of \$10,000.00 and guilty of theft of \$10,000.00; or he/she could be guilty of a tort, being willful interference with a contract and penalized on that basis.

Thank you for the opportunity to input and comment.

Rudy A. Mayer TXS12271

Leslie L. Kacer

From: r c [REDACTED]
Sent: Wednesday, May 21, 2014 9:58 PM
To: HB3038 Interim Charge
Subject: Useless Bill

Please repeal this Bill as Will Keep Legal people from Selling Goods to help our economy Thanks
Russell

Leslie L. Kacer

From: Jane du Toit [REDACTED]
Sent: Wednesday, May 21, 2014 10:17 PM
To: HB3038 Interim Charge
Subject: Internet and online auctions

Leave the internet and online auctions alone, most of the business done is wholesale. If you mess with this you will only be hurting the working folks who are trying to survive the economic crisis in this country. We are over taxed already and aren't getting our money's worth from education, cities, water utilities and electric companies. Quit trying to fund useless programs with the little we have to work with.

--

Jane du Toit
817-734-5730
[REDACTED]

Leslie L. Kacer

From: [REDACTED]
Sent: Wednesday, May 21, 2014 10:35 PM
To: HB3038 Interim Charge
Subject: Auctioneer Laws???

If I understand the proposed Bill, then I oppose the State of Texas requiring an "Auctioneer's license" in order to sell one's own personal property on craigslist, etsy, ebay, garage sales, etc. It is none of the state's business if I have an old bicycle to sell. What has happened to our state that they think they should be able to control our personal property and the sale thereof.

I do hope that I am wrong in my understanding of the proposed bill, but if the state of Texas legislators truly think that they need to Regulate our personal freedoms to sell used "junk", then I feel that they are no longer worthy to "represent" the people!!!

Thank you
L Rogers

Leslie L. Kacer

From: Judy Yowell [REDACTED]
Sent: Wednesday, May 21, 2014 11:13 PM
To: HB3038 Interim Charge
Subject: WHY DO WE NEED HB3038?

Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy?

Absolutely Not. Why? They've been working just fine for years the way they are. Why in hell do we need another useless regulation? You'll only be hurting fellow Texans, your constituents. Leave well enough alone. If this comes up for vote, I will vote against it.

Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? **Yes, of course. Why? All auctioneers have to have a license so we have someone to blame when something goes wrong.**

Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? **No! Why? I don't believe in the Death Tax nor to do believe in any regulation or law that tells me what I can do with my own stuff and money. What's mine is mine, and I should be able to do what I want with it, without a government taking a piece of it, JUST BECAUSE THEY CAN! Want government out of my personal business, period. I thought that's what Texas stood for!?**

Which employees at an auction company should be required to hold a Texas auctioneer license? **Just the Auctioneer Why? Why should a helper have to have a license to just hold up a product or organize a product, etc. PLEEEZE!**

How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? **What do you mean how do I define it? Seems to me to be self-explanatory! If a sale or auction is conducted outside of this state, it means the sale is NOT CONDUCTED in this state but in another state. WHO MAKES THESE QUESTIONS UP? 😊**

If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? **I just read the law, but as usual, most any code is hard to understand for the average person. I'm just commenting on the questions above .**

My question is, WHY DID YOU THINK THE CURRENT REGULATION NEEDED TO BE CHANGED? Did somebody not have anything to do that day?

Later this year TDLR will host a summit to discuss HB 3038 implementation, the HB 3038 interim charge, and possible changes to the Texas auctioneer law. TDLR email update subscribers will be notified about the summit and about any changes or updates to the Texas Auctioneer program.

Judith Yowell

A customer of many different auctions and selling sites and like them the way they are now: Free and self regulated.

Leslie L. Kacer

From: michael Brummett [REDACTED]
Sent: Thursday, May 22, 2014 8:29 AM
To: HB3038 Interim Charge
Subject: no license require to sell on ebay

I don't think you should require a License to the seller on eBay, for him Or her to sell their own things it is like taking your stuff to a live auction, except you do not have to leave the house. The Auctioneer or the owner of the auction house should carry the License or whoever we pay a commission to.

Leslie L. Kacer

From: [REDACTED]
Sent: Thursday, May 22, 2014 10:07 AM
To: HB3038 Interim Charge
Subject: RE: TEXAS GOVERNING EBAY? READ ON THIS COULD HAPPEN

It may be argued that a ebay auction is not a typical auction because software controls the bidding and it is based on time just as much as a bid and there is no "auctioneer" it is a software program running a ad. Then after that it really does not work much like a real auction....

A real auction does not just end and all bidding stops just because the clock rocks to the end. On ebay it's over when the time runs out not when the bidding ends. They are not real auctions by nature. Also ebay allows "bid sniping" which allows a third party software to bid for the buyer in the last second to keep bidders from driving up the price as high as easy. Requiring a license for strictly doing ebay might be a over reach. I would expect resistance from across the whole United States including ebay itself. Ebay auctions do not function like a typical auction and there is Since there is auctioneer who is bound by Texas law?

Banking laws regarding ecommerce already protect buyers in a way the TDLR really can't. The law already protects consumers from bad online purchases. So does ebay....there really is no "as is" ebay auction like there is with a physical auctioneer. The buyer can just claim fraudulent representation and 99% of the time the payment industry or ebay itself will try and "undo" the deal.

When you consider how ebay auctions work and the current laws for selling online.... having ebay in this conversation just shows a lack of understanding about ebay in general by lawmakers by the TDLR. There are other online auctions in which are not ended by the website based on time and act like a real auction ending when the bidding ends not the ad - I have no problem with a more traditional auction like that being regulated but regulating a international site like ebay whose "auctions" end based on time not the highest bid is just spreading TDLR thin and focusing on a area that is already being served by ebay itself and the banking and electronic payment industry. We auction items on ebay but I only need listing skills and am bound by ebays user agreement and payment/credit card industry laws - there is zero reason for anyone employed by us to know anything about Texas Auction Law. We create ads on ebay and that's all. We do not actively participate in the sale/auction after the ad is live like a real auctioneer does.
Craig McGregor owner - Glorysales / Texas_Resale

----- Original Message -----

Subject: TEXAS GOVERNING EBAY? READ ON THIS COULD HAPPEN
From: [REDACTED]
Date: Wed, May 21, 2014 8:59 pm
To: [REDACTED]

DO YOU WANT TEXAS TO GOVERN YOU DOING EBAY OR OTHER TYPE OF ONLINE AUCTIONS?
READ ON THIS MAY TAKE YOUR ABILITY TO SELL. ON THESE SOCIAL SITES AND MORE. THIS IS
SOMETHING EVERYONE NEEDS TO KNOW ABOUT

Texas House of Representatives Speaker Joe Strauss on January 31, 2014, charged the House Licensing and Administrative Procedures Committee to "Study the implementation and possible impacts of HB 3038 (83R), including the effect it would have on multi-state auction companies, as well as business-to-business auctions." The Texas Department of Licensing and Regulation (TDLR) wants to know your ideas regarding how we can best implement House Bill 3038, the impact of this legislation for Texas, and recommended changes to improve the regulation of auctions and auctioneering in Texas.

House Bill 3038 was enacted in 2013 by the 83rd Texas Legislature. It removed the live bid call framework within the definition of "auctioneer," repealed the associate auctioneer program, changed the membership of the Auctioneer Education Advisory Board, and increased the amount of money injured consumers may recover from the Auctioneer Education and Recovery Fund. We would appreciate you sending your response to the following questions to HB3038InterimCharge@tdlr.texas.gov by June 30, 2014:

Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Later this year TDLR will host a summit to discuss HB 3038 implementation, the HB 3038 interim charge, and possible changes to the Texas auctioneer law. TDLR email update subscribers will be notified about the summit and about any changes or updates to the Texas Auctioneer program.

Thank you for your assistance with the HB 3038 interim charge by providing your feedback to us.

Questions? Post them on TDLR's Facebook page, tweet us or email

HB3038InterimCharge@tdlr.texas.gov

This email was sent to [REDACTED].

If you would like to stop receiving notices like this please click...

<http://www.wwtltd.com/cgi-bin/mnnomail.cgi?> [REDACTED]

Leslie L. Kacer

From: Trace Carpenter [REDACTED]
Sent: Thursday, May 22, 2014 11:57 AM
To: HB3038 Interim Charge
Subject: Re: We need your input regarding House Bill 3038
Attachments: TDLR Interpretive Letter Regarding Charity Auctions.pdf; TDLR Response to Interpretive Letter Regarding Charity Auctions.pdf

In your request for feedback email of 14 May 2014 you asked the following questions:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Yes; the reasoning being based on several tiers.

The first issue being that ebay style sites excluded, many are skirting the law by liquidating businesses and various other merchandise by operating proprietary online sites and claiming they are "Online Auctioneers" and not subject to the Licensing Law.

We have to ask if the Licensing Law is there to protect consumers or not? If we accept the fact that the Licensing Law is there to protect consumers, then the fact that the sale is being conducted online if anything poses a much greater risk to the consumer than in a live sale. Those selling items on the aforementioned sites can easily run up their hit counters to make it appear there is much greater interest than there really is in an effort to force a "Buy it Now" option, or to incite a buyer to bid high early. They can still bid from their own computer to run up the bid, they can much more easily misrepresent the items, etc. In short online fraud runs rampant and there is little that can be done about it according to Federal Authorities.

This brings us to the ebay style sites. Again, if we're going to now state that these companies operating as "Online Auctioneers" must be regulated, then how does one not justify the same thing taking place on ebay or other similar site. These are in fact more conducive to online fraud than even the proprietary site being run by the "Online Auctioneer." With proxy servers all over the internet, these accounts can be run from Dallas, yet show an IP address out of another country. People set up shell membership accounts and create a few sales to create some user history, and then have the funds transferred to a debit card. The bottom line is that the public is much more likely to be cheated by an online auctioneer, than by a tangible person living in their community.

Therefore as stated previously, one has to ask what the goal of the law truly is.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Yes. As stated above: The industry either needs to be regulated in an effort to protect the public or it doesn't. If it does, then the fact that the sale is being conducted online if anything poses a much greater risk to the consumer than in a live sale. Those selling items on the aforementioned sites easily run up their hit counters to make it appear there is much greater interest than there really is in an effort to force a "Buy it Now" option, or to incite a buyer to bid high early. They still bid from their own computer to run up the bid, they misrepresent the items, set up shell membership accounts and create a few sales to create some user history, and then have the funds transferred to a debit card. The bottom line is that the public is much more likely to be cheated by an online auctioneer, than by a tangible person living in their community.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Yes. Why would they not? The only person less likely to be defrauded in a situation such as this is the Seller, but what about the Buyer? The Buyer's exposure is greatly enhanced by a person who has his own best interest at heart. If the Department's goal is to protect the public in a competitive bid arena, then it should be across the board. A licensed auctioneer whose reputation, business, and license is on the line is not as likely to try and cheat a buyer as is a person who is trying to run up the bids on his own merchandise.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

The Auctioneer is the only person who needs to be licensed, as the Auctioneer is held accountable for everything in that office. The Associate Auctioneer needed to be licensed, but the auction schools apparently didn't like that provision.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

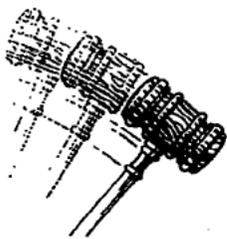
I interpret that paragraph to mean a sale that takes place outside the jurisdictional boundaries of the State of Texas. For example if a Texas Licensed Auctioneer conducted an estate auction in Idaho, the merchandise was

in Idaho, and the auctioneer stood on the ground in Idaho, called bid, and transacted the deal, Texas Law does not apply. If however the auctioneer conducted the sale here in Texas for merchandise that is in Idaho then there is a nexus or connection and they are under Texas jurisdiction.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Due to Legislative changes, it became legal for charitable organizations to use unlicensed auctioneers as long as they are not compensated. This in effect created two different sets of rules (or lack thereof) which makes it much more burdensome for an organization to use a professional auctioneer, even if they are willing to pay for the professional. Charities, churches, etc., will often handle their own advertising, clerking, check out, etc., and wish to only pay the professional auctioneer for calling bid. While this is legal for an unpaid auctioneer, it puts the compensated, professional, licensed auctioneer in violation of State Laws and Rules.

In 2009 I submitted a request for opinion on this matter to Brad Bowman, General Counsel for the State. I have attached a copy of that letter which clearly outlined the legal issues, and a copy of the response from Mr. Bowman's office. Please review them closely as it will outline the concerns with the current Laws & Rules.



Trace Carpenter & Associates
Professional Auctioneers & Appraisers

445 E. FM 1382, Ste. 3-373
Cedar Hill, Texas 75104

(972) 617-9210

June 2, 2009

Via Federal Express
8688 9386 0299

Texas Dept. of Licensing & Regulation
Attn: Brad Bowman, General Counsel
920 Colorado
Austin, Texas 78701

Re: Interpretive letter request regarding benefit auctions performed for compensation

Dear Mr. Bowman:

I am writing pursuant to advice received from Russ Tauli in the TDLR Compliance Department to obtain an Interpretive Letter regarding distinctions between a licensed auctioneer conducting a charitable auction for compensation, and someone conducting the same auction for free.

Based on the letter of the current rules and laws, it would appear that the changes imposed by Rep. Warren in HB 365 have put the charities and licensed auctioneers in a precarious position. Please allow me to explain my concerns.

The Texas Occupation Section 1802.002 (3) states that the chapter does not apply to:

"a sale conducted by a charitable, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation."

The key statement in the above reference statute causing concern is *"if the person organizing, arranging, or conducting the auction receives no compensation."* With that being said, it would seem clear that if a licensed professional auctioneer called bid for a charity auction for compensation, then the regulations of the chapter would apply.

With that in mind please note that charitable and benefit auctions are a large business, and in fact the committees that run these charities often spend six months to a year putting together the auctions, soliciting items, and planning and marketing the event. Then on sale day, the auction committee runs the gala event and the professional auctioneer is simply hired for his ability to sell from the stage. This appears however to place a licensed professional auctioneer who is calling bid for compensation to be in violation of 1802.051 (c) which states:

"A person who is licensed under this chapter may not act as an auctioneer for an auction company unless the company is owned or operated by a person who is licensed under this chapter."

To make matters worse, it is often customary at a charitable event to bring a committee chair or other VIP to the stage and have some fun with them by giving them some instruction in front of the crowd on how to be an auctioneer, and then allowing them to sell one item. While a free volunteer would be allowed to do this, it appears that for a licensed auctioneer to do so would place him in violation of 67.70 (c) of the Administrative Code which states:

"A licensee may not allow any person who is not either a licensed auctioneer or a licensed associate auctioneer to call bids at a sale."

Lastly please note that these charitable committees spend a great deal of time and money promoting the sales in invitations, flyers, and other mediums over which the auctioneer has no control. This means that the advertisements will normally not comply with the requirements of having the auctioneer's name and license number in the advertisement. They may also alter statements in smaller fonts, or may misuse the term "Absolute" or not disclose a Buyer's Premium.

Given the above concerns, it would appear that the only way for a licensed auctioneer to legally conduct a benefit or charitable auction would be to only conduct the sale, if the auctioneer's company was completely in charge of the sale and handled all aspects of the advertising, lotting, clerking, and cashing of the sale. For this to take place however, would require the amount charged to the charity to far exceed what most would be willing to pay instead of utilizing their own volunteers.

If this is indeed the Department's position then it would appear that the advent of the change in statutes allowing a volunteer to act as an auctioneer for free have greatly hurt the licensed profession.

With all of that expressed can you please tell me if this is the Department's position on the statutes?

Also, if a licensed auctioneer calls bid at a charity or benefit auction must he still make the same statutory announcements from the stage regarding licensure etc? Keep in mind that the bid cards will most likely never have the Department's information printed on them, nor will the coordinators have a sign posted regarding licensure of the auctioneer.

I truly appreciate you taking the time to review and answer my concerns. Thank you for your time and consideration in this matter.

Respectfully submitted,



William (Trace) Carpenter
Professional Auctioneer

CC: File



TEXAS DEPARTMENT OF LICENSING AND REGULATION

General Counsel's Office

P. O. Box 12157 • Austin, Texas 78711 • (512) 463-3306 • (800) 803-9202

Fax (512) 475-3032 • Web site: www.license.state.tx.us

June 5, 2009

Mr. William (Trace) Carpenter
Trace Carpenter & Associates
445 E. FM 1382, Suite 3-373
Cedar Hill, TX 75108

Via Regular First Class Mail

Dear Mr. Carpenter:

I am responding to your letter of June 2, 2009, to Brad Bowman.

In your letter you clearly state some of the statutory requirements for auctioneers engaged in conducting regulated auctions. Auctions conducted by charitable religious or civic organizations using the services of an auctioneer who is compensated for those services are regulated auctions. In such cases the auctioneer must meet all the requirements set out in the statute and rules. Your concerns about bid calling, announcing, advertising, lotting, and cashing such auctions should be concerns of any auctioneer who conducts a regulated auction.

The language of Occupations Code § 1802.002 provides that the chapter regulating auctions and auctioneers does not apply to the enumerated exemptions. Thus an auction conducted by a charitable, religious, or civic organization is exempt and none of the requirements of the chapter apply so long as the person(s) organizing, analyzing or conducting the auction are not compensated.

If an auctioneer wishes to be paid for services provided for an auction that could qualify for the exemption if he were not paid, he will have taken away the exemption and all of the concerns you mentioned come into play.

The Department's position in this matter is to apply the statutory provisions as always. In this case the statute clearly defines those auctions that are exempt. If the auctioneer is paid the auction is regulated, even if it is conducted by a charitable organization.

Please feel free to contact me if you want to discuss this matter.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey R. Hill".

Jeffrey R. Hill
Assistant General Counsel
Office of General Counsel
Texas Department of Licensing and Regulation

rk/ JRH

cc: Brad Bowman
File

Frank S. Denton, Chair – Conroe, Texas

LuAnn Morgan – Midland, Texas

Fred Moses – Plano, Texas

Mike Arismendez – Shallowater, Texas

Lilian Norman-Keeney – Taylor Lake Village, Texas

Lewis Benavides – Oak Point, Texas

Deborah A. Yurco – Austin, Texas

Leslie L. Kacer

From: DAVID MATULA [REDACTED]
Sent: Thursday, May 22, 2014 12:07 PM
To: HB3038 Interim Charge
Subject: Re: TEXAS GOVERNING EBAY? READ ON THIS COULD HAPPEN

What the heck is going on?

You guys are getting a little crazy letting years on different types of auctions on line go on and now you want to try and let people get the best price they can get for an item that they no longer want.

I don't use the sights much but when I am looking for something that I can't find anywhere else or I am trying to find a bargain I at least look around. It is also where I go to find value on items that I have been keeping and collecting to see if it is time to sell them or to put them back on the shelf.

if you want to regulate the internet then regulate the internet not just parts of it.

Do something constructive like all the people freeloading off my tax dollars that don't want to work or try and make a living? Quit trying to take income sources away from us.

Subject: TEXAS GOVERNING EBAY? READ ON THIS COULD HAPPEN

DO YOU WANT TEXAS TO GOVERN YOU DOING EBAY OR OTHER TYPE OF ONLINE AUCTIONS? READ ON THIS MAY TAKE YOUR ABILITY TO SELL. ON THESE SOCIAL SITES AND MORE. THIS IS SOMETHING EVERYONE NEEDS TO KNOW ABOUT

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Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest

and Etsy? Why?

Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Later this year TDLR will host a summit to discuss HB 3038 implementation, the HB 3038 interim charge, and possible changes to the Texas auctioneer law. TDLR email update subscribers will be notified about the summit and about any changes or updates to the Texas Auctioneer program.

Thank you for your assistance with the HB 3038 interim charge by providing your feedback to us.

Questions? Post them on TDLR's Facebook page, tweet us or email HB3038InterimCharge@tdlr.texas.gov

Leslie L. Kacer

From: r c [REDACTED]
Sent: Thursday, May 22, 2014 2:32 PM
To: HB3038 Interim Charge
Subject: HB3038

how can we REPEL-defeat this? Unfair this will put us out of business. Legit People doing legit selling

Leslie L. Kacer

From: [REDACTED]
Sent: Friday, May 23, 2014 5:53 AM
To: HB3038 Interim Charge
Subject: Texas auctioneer license

Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy?

NO,
Why? This will cripple millions of people barely making ends meet in this economy. We do not need more regulations, we need less regulations,
America has been destroyed by all these unnecessary regulations.

Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas?

NO
Why?
This is crippling people trying to make a living and will only bring up the cost of everything and put more burden on Americans already struggling.

Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property?

NO
Why?
This sounds like a liberal question, why should anyone need a license to sell their own property? That is such a stupid question.

Which employees at an auction company should be required to hold a Texas auctioneer license?

IF anyone should hold a license, then only the owner.

Why?
There is no proof that everyone holding a license to auction items is even necessary. Why have one to work there.

How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)?

Why?

If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change?

Why?

Leslie L. Kacer

From: Brenda Chapman [REDACTED]
Sent: Sunday, May 25, 2014 8:52 PM
To: HB3038 Interim Charge
Subject: Feedback regarding House Bill 3038

Below are answers to the questions you submitted for review ...

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

ANSWER: Absolutely not, because the online auction is not being conducted by an "auctioneer" per se, and any item(s) for sale in the aforementioned venues are simply submitted to the websites by individuals, and such individuals are not actually holding or conducting the auction themselves, the site and the site's software are the entities actually conducting the auction. The individual seller has no control over the functions or features of how the software works and are themselves customers/users of the websites that are actually conducting and controlling the auctions.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

ANSWER: No, because an auctioneer license should be reserved for professionals of the auction industry, not for every "Tom, Dick or Harry" that decides to sell an item here, or a couple of items there, on an amateur basis. The rules and requirements of becoming a licensed auctioneer do not apply to amateur online auctions just because they are in a similar format as live auctions.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

ANSWER: What in the world for? Again, you're requiring that someone become a **professional** auctioneer just to sell a few items in a similar format online -- that's actually being conducted by the site and the site's software to which the seller has no control over.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

ANSWER: The employees that are actually conducting (i.e., calling) the auction. What, you would want the receptionist or person that moves the inventory or temporary data entry person to hold a license they would never use? Why?

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

ANSWER: I would define it as a sale or auction that is conducted outside of the state of Texas in any way, shape or form.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

ANSWER: I would make it straightforward so that anyone wanting to be a professional auctioneer, i.e., conduct, hold and call live auctions in person, would need to be licensed by the State of Texas as a professional auctioneer with the

necessary training and credentials required. I would nix, delete, and totally exclude any type of "automated" auctions held and conducted by online venues due to the fact that it's totally unnecessary and would be a ridiculous drain on state's resources.

Sincerely,

Brenda Chapman

Leslie L. Kacer

From: James LaGesse [REDACTED]
Sent: Sunday, June 01, 2014 9:50 PM
To: HB3038 Interim Charge
Subject: Bill 3038

1. Yes. Defines accountability if a buyer or seller has a problem with any given transaction.
2. Yes. Falls within Texas auction law and keeps accountability to the licensed auctioneer.
3. No. This can reflect poorly on the auction industry as a whole if a person selling their own property makes false assurances, has skills in the crowd and won't know about collecting and paying sales tax properly.
4. Owner of the company and any employee that would call bid. Defines who is responsible for each transaction.
5. Any sale that takes place from any physical location outside the Texas border. What defines a States' border? Physical landmark, not cyberspace.
6. Requirements for a auctioneer license to include job experience and test versus "school" and test.



Leslie L. Kacer

From: Jim Swigert [REDACTED]
Sent: Saturday, June 14, 2014 2:52 PM
To: HB3038 Interim Charge
Subject: HB3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

YES. As stated in Chapter 1802 currently an auctioneer license is required when selling personal property for other people, and solicits negotiates or executes an auction listing contract. It also states than individuals can sell their own property, not property of others, once in a 24 month period. Selling personal property by any means using an auction or competitive bidding is included for either individual or auctioneer. It is not the method of auction that matters but the fact that one selling another's property has a legal responsibility to that person to transfer funds to the seller timely, collect and pay sales taxes to State of Texas and under current law that is for any method and all property located in Texas.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

YES. It only matters that the property is located in Texas as that is the jurisdiction of TDLR and the where law covers. Where the seller and buyer are located is not of any relevance just as with the Comptrollers jurisdiction for State sale taxes for all times sold in Texas.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

NO. In our country the freedom to buy and sell is highly respected and the current law covers that but limits selling by auction to only one time in a 24 month period to prevent constant buyer of property just to sale at auction from becoming a business and therefore falling into the realm of this law.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Any person that falls under the definition of 1802.001.5 as changed in June of 2103 by HB3038: "Auctioneer" means any person [an individual] who: (A) sells or offers to sell property at auction, without receiving [valuable] consideration; or (B) solicits, negotiates, or executes an auction listing contract [, as a bid caller].

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Simple: If the property to be auctioned is located OUTSIDE the boundaries of Texas, then it is exempt for Texas law!

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

When HB 3038 is FULLY enforced then Texas will have one of the best and fairest auction laws in these united states!

Jim Swigert
SWICO Auctions
www.swicoauctions.com
979-224-2861

Leslie L. Kacer

From: Sheryl Bates [REDACTED]
Sent: Monday, June 16, 2014 3:40 PM
To: HB3038 Interim Charge
Subject: Email

Is this the correct email?

Sheryl Bates | Rene' Bates Auctioneers, Inc.
O. (972) 548.9636 | F. (972) 542.5495
4660 County Road 1006 McKinney, TX 75071
[REDACTED] | www.renebates.com

Leslie L. Kacer

From: Sheryl Bates [REDACTED]
Sent: Monday, June 16, 2014 3:45 PM
To: HB3038 Interim Charge
Subject: HB 3038
Attachments: HB3038 Response.docx

Attached please find my comments on HB3038.

Sheryl Bates | Rene' Bates Auctioneers, Inc.
TX LIC 15025
O. (972) 548.9636 | F. (972) 542.5495
4660 County Road 1006 McKinney, TX 75071
[REDACTED] | www.renebates.com

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Answer: Yes if the items are located in the State of Texas. If the items are located in the State of Texas, then the sale is taking place in the State of Texas so the company or individual placing the items for sale is conducting business in the State of Texas and should be required to hold a Texas auctioneer's license just as any other individual conducting auctions in the State of Texas would be required to do. Additionally, items being sold and delivered in the State of Texas (or auctions in the State of Texas which require bidders to pick up their items) are subject to the Sales and Use Tax Laws of the State of Texas and must also hold a permit to collect and remit the sales tax on these items.

If a real estate license is required to sell real property that is listed and located in Texas, regardless of location or residence of the broker, then a person should be required to have an auctioneer's license to sell personal property at auction located in Texas regardless of the location of the individual or company conducting the auction.

The "auction website examples" given above are a little far reaching in that they were originally intended as a primary means for individuals or companies to liquidate their own items. It is unreasonable to assume that the State of Texas could or would have any legal or legislative control over them. However, two of the deciding factors on who should/should not be required to be licensed should be (1) are you selling your own items OR items that belong to someone else and (2) do you ever collect auction proceeds on behalf of someone else which puts the individual or company into a fiduciary role and they should be required to

maintain escrow accounts like all other licensed auctioneers in the State of Texas.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Answer: Same as Answer #1. Where the potential buyer resides is of no value as it relates to who should hold an auctioneer's license. This bill is addressing sellers not buyers.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Answer: No, Chapter 1802, section 1802.002 (4) allows for a sale conducted by any person of the persons property if the person is not engaged in the business of selling property at auction on a recurring basis. If they are only selling their own items and there are never other consignors involved in their sales or auctions then they would not be required to have a license. The issue here will be for those individuals who buy items specifically for resale and then turn around and sell those items via auction which would have them conducting sales on a recurring basis. They are technically still selling their own. It would seem the burden of proof would be on the State to prove that someone was actually allowing consignors in their auctions and therefore selling other people's items and handling funds on the behalf of others.

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In summary, 1802 is written well and covers all necessary items. The main issue at hand is determining who should be required to have a license and then enforcing those requirements. It seems that the HB3038 has not really done anything other than put more regulation and requirements on those who were already licensed and did nothing to those who weren't. There are no "teeth" to the bill since nothing has been said or done about any of the companies doing business in this state without a license. Your first question addressed eBay, Etsy, Facebook, etc. However, it did not mention companies that are solely in the business of conducting auctions in this state without a license such as Public Surplus, GovDeals, Propertyroom.com, etc. Not only are these companies operating in this state without a license, they are working for our governmental entities and either collecting sales tax without a permit or not collecting it at all. It appears this state has no jurisdiction over them whatsoever since they are located out of state so they have operated business as usual since HB3038 was passed. Should a Texas company be held to a higher standard than an out of state company? As it stands, that is what's happening which is putting an undue burden on Texas companies and giving out of state companies an unfair advantage over conducting auctions for items located in the State of Texas.

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Leslie L. Kacer

From: Rene' Bates [REDACTED]
Sent: Monday, June 16, 2014 3:47 PM
To: HB3038 Interim Charge
Subject: HB3038 Changes
Attachments: HB3038 Response.docx

Attached please find my comments on HB 3038.

Rene' Bates | Rene' Bates Auctioneers, Inc.
TX License 6644
O. (972) 548.9636 | F. (972) 542.5495
4660 County Road 1006 McKinney, TX 75071
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Leslie L. Kacer

From: Dean, David [REDACTED]
Sent: Wednesday, June 18, 2014 10:06 AM
To: HB3038 Interim Charge
Subject: HB3038 Response[1].docx
Attachments: HB3038 Response[1].docx

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Leslie L. Kacer

From: David Dean [REDACTED]
Sent: Wednesday, June 18, 2014 10:09 AM
To: HB3038 Interim Charge
Subject: HB3038 Response[1].docx
Attachments: HB3038 Response[1].docx

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

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Leslie L. Kacer

From: [REDACTED] on behalf of Luther Davis [REDACTED]
Sent: Friday, June 20, 2014 10:26 PM
To: HB3038 Interim Charge
Subject: Feedback on HB 3038

We would appreciate you sending your response to the following questions to HB3038InterimCharge@tdlr.texas.gov by June 30, 2014:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? **Yes Why? By law the definition of the auction defines now what is required of individuals to conduct auctions within the boundaries of the State of Texas. If I, as an auctioneer residing in the state of Texas desire to conduct auctions in another state, for example, I would be required to hold a license for that particular state. Auctions, whether live or online, are a process in which we are dealing with not only the seller's merchandise and proceeds but also the sometimes sensitive information provided by a buyer. Without legislation and requirements, a client, whether buyer or seller, can be limited on the satisfaction and security they are provided if there is no local regulation.**
2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? **Yes Why? Very much the same answer as above. The licensing is not for the benefit of the auctioneer or auction company but rather for the seller and buyer; it is designed for their protection. With the ongoing growth of technology, it is becoming increasingly important that the fiduciary duty to the parties of transaction are at the least covered by a regulated authority.**
3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? **Yes Why? While some people could discern right from wrong, many people have the temptation to take advantage of others to benefit themselves financially. Even within our licensed program, we see this happen. But with licensed individuals, TDLR is able to control or help minimize the damage that an auctioneer might cause for a client. Auctions are in many cases a tremendous way of transferring assets from one owner to the other and a viable way to add revenue to our economy. Most individuals conducting their own auction will not know how or be required to retain sales tax which is required by licensees as well.**
4. Which employees at an auction company should be required to hold a Texas auctioneer license? **The auctioneer and owner(s) and/ or any others if they "negotiate with the seller". Why? If the person is merely a person "accepting" items for auction and the contract, consignment, or agreement is signed and negotiated by someone else, I do not see the need for licensing that employee. In some cases, large companies could have several employees capable of unloading items, accepting merchandise, etc...but they may not negotiate the terms of the sellers consignment.**
5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? **A sale in which the (1) Owner's agent or auctioneer, (2) the location/delivery of merchandise, and (3) the buyer(s) are all located outside the boundaries of the state or any combination of 1, 2, or 3 above creating a true transaction outside the state. Why? Any combination of 2 of numbers (1, 2, or 3) would place the transaction or consummation of a sale outside the state if any 2 of these are true.**
 6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? **1802.002(a) (4) Sale of persons property Why? See answer above in 3.**

In addition, a change to the continuing education requirement should be reviewed. The 2 hours for Laws and Rules should be extended to be required every 2 years to meet in line with the legislature instead of every year.

Thanks in advance for your consideration of the input of auctioneers.

Luther Davis, CAI, BAS, PRI
TX 8325 Auctioneer/ Realtor

Davis Auctioneers, L. P.

P. O. Box 2195

Burleson, TX 76097

Office: [817-447-9805](tel:817-447-9805)

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web: www.davisauctiontx.com

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Leslie L. Kacer

From: Michelle Bates [REDACTED]
Sent: Monday, June 23, 2014 2:25 PM
To: HB3038 Interim Charge
Subject: House Bill 3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Answer: Yes if the items are located in the State of Texas. If the items are located in the State of Texas, then the sale is taking place in the State of Texas so the company or individual placing the items for sale is conducting business in the State of Texas and should be required to hold a Texas auctioneer's license just as any other individual conducting auctions in the State of Texas would be required to do. Additionally, items being sold and delivered in the State of Texas (or auctions in the State of Texas which require bidders to pick up their items) are subject to the Sales and Use Tax Laws of the State of Texas and must also hold a permit to collect and remit the sales tax on these items.

If a real estate license is required to sell real property that is listed and located in Texas, regardless of location or residence of the broker, then a person should be required to have an auctioneer's license to sell personal property at auction located in Texas regardless of the location of the individual or company conducting the auction.

The "auction website examples" given above are a little far reaching in that they were originally intended as a primary means for individuals or companies to liquidate their own items. It is unreasonable to assume that the State of Texas could or would have any legal or legislative control over them. However, two of the deciding factors on who should/should not be required to be licensed should be (1) are you selling your own items OR items that belong to someone else and (2) do you ever collect auction proceeds on behalf of someone else which puts the individual or company into a fiduciary role and they should be required to maintain escrow accounts like all other licensed auctioneers in the State of Texas.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Answer: Same as Answer #1. Where the potential buyer resides is of no value as it relates to who should hold an auctioneer's license. This bill is addressing sellers not buyers.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Answer: No, Chapter 1802, section 1802.002 (4) allows for a sale conducted by any person of the person's property if the person is not engaged in the business of selling property at auction on a recurring basis. If they are only selling their own items and there are never other consignors involved in their sales or auctions then they would not be required to have a license. The issue here will be for those individuals who buy items specifically for resale and then turn around and sell those items via auction which would have them conducting sales on a recurring basis. They are technically still selling their own. It would seem

the burden of proof would be on the State to prove that someone was actually allowing consignors in their auctions and therefore selling other people's items and handling funds on the behalf of others.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Answer: Any individual calling a live auction or any individual or owner of a company that holds any ownership stake in the company. These are typically the ones who are negotiating contracts and handling any legal aspects of the company as it relates to signatory authority.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Answer: I would say that a sale or auction conducted outside of this state occurs when the items being sold are located outside the State of Texas. If the items being sold are not located in the State of Texas, then regardless of where the company selling them is located OR where the winning bidder is located, if the items are being sold from a location outside of this state and being removed from a location outside of this state, then the sale or auction is being conducted outside of this state. I don't see how the State of Texas would have any jurisdiction over items being sold outside this state just as I don't believe any other state would have jurisdiction over items being sold and picked up from a location inside the State of Texas.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Answer: Section 1802.054 addresses the issue of sales tax permits. States that applicants for licenses (and pertains to those who already have a license) must provide the permit number of a sales tax permit issued to the applicant by the comptroller or proof of exemption. **A very important fact to note here is that THOSE COMPANIES/INDIVIDUALS who are able to skirt the requirements for a license are also not complying with the requirement to hold a valid sales tax permit in the State of Texas. As a result, the State of Texas is losing out on untold dollars in sales tax revenue and this ties back to the issue of out of state companies doing business in the state without a license. They are not only violating the auctioneer law as it relates to licenses but they are also not being held accountable for the collection and remittance of sales tax as those who are licensed in the state are being held.**

In summary, 1802 is written well and covers all necessary items. The main issue at hand is determining who should be required to have a license and then enforcing those requirements. It seems that the HB3038 has not really done anything other than put more regulation and requirements on those who were already licensed and did nothing to those who weren't. There are no "teeth" to the bill since nothing has been said or done about any of the companies doing business in this state without a license. Your first question addressed eBay, Etsy, Facebook, etc. However, it did not mention companies that are solely in the business of conducting auctions in this state without a license such as Public Surplus, GovDeals, Propertyroom.com, etc. Not only are these companies operating in this state without a license, they are working for our governmental entities and either collecting sales tax without a permit or not collecting it at all. It appears this state has no jurisdiction over them whatsoever since they are located out of state so they have operated business as usual since HB3038 was passed. Should a Texas company be held to a higher standard than an out of state company? As it stands, that is what's happening which is putting an undue burden on Texas companies and giving out of state companies an unfair advantage over conducting auctions for items located in the State of Texas.

Additional requirements of HB3038 were about where/when the auction license must be posted. It made more sense before the changes were made due to HB3038. We have been told we must have our auction license on every single printed material that goes out with our name on it. This includes all promo items that are not promoting any particular auction but rather just the company itself. This new requirement will put an undue cost on licensed auctioneers in that they must reprint any/all promo materials, promo items, business cards, etc. that they have. We were even told that if you have pens or other "goodies" that you hand out, the license number must be on those. Many licensed auctioneers have thousands of dollars of promo items in stock and should not be required to include their license number on these items. How is this particular item being addressed? Once again, it seems that those who are following the rules and have a license are getting unreasonable and expensive rules applied to them while those who don't have a license are simply being ignored.

Thank you,
Michelle Bates, 12100



Michelle Bates | René Bates Auctioneers, Inc.

O. (972) 548.9636 | F. (972) 542.5495

4660 County Road 1006, McKinney, TX 75071

| www.renebates.com

Leslie L. Kacer

From: Lori Lemons-Campbell [REDACTED]
Sent: Wednesday, June 25, 2014 12:36 PM
To: HB3038 Interim Charge
Cc: Lori Lemons-Campbell
Subject: FW: Answers regarding HB 3038

June 22, 2014

TDLR
Re: House Bill 3038

Thank you for the opportunity to submit my answers to your questions concerning HB 3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Answer: 1. No, Retail (New) versus Yes, Personal Property (Used), Purchasing retail items through a retail store such as Ebay, Sears, Amazon etc. or subject to strict FCC rules. I am sure they are being monitored daily. However, A person in our state may hold an auction under TDLR rules of their own merchandise. If that person fails to follow TDLR rules than they should be fined, or eventually prosecuted.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Answer: 2. . Yes, In Texas we have an auctioneers license law for a reason. Many years ago Auction companies from other states would come into Texas conduct auctions for a Texas Business or Resident and go back to their State with the Sellers money and never pay the Seller. I am sure that TDLR has record of this problem in the history books. To protect the consumer, Texas decided that it was very important to have a Texas Auctioneers license and began protecting the consumer by requiring Escrow Accounts, Rules and Laws concerning the sale of merchandise in Texas. Selling merchandise by online auction in Texas to our Texas Consumers should be treated no differently. The Online Auction Company should have an Escrow Account and follow the same rules as a live auctioneer.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?
Answer: 3. Yes, If they try to sell personal property on an occurring basis. The law has already been determined by TDLR concerning a person selling their own merchandise. This law should be upheld.
4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?
Answer: 4. An employee who will sign the contract and is over 18 years of age.
5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?
Answer: 5. The sale of merchandise outside of this State. Concerning my own experience selling online auctions. If I have a company contact me out of State to possibly sale merchandise located in their state. It is up to me to check into that states Online Auction Laws. Example: I am in Texas and they are in XYZ.
It is important to follow the auction laws of each state.
6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?
Answer: 6. . Yes, The Associate licensees would be reinstated for no more than a 2 year period. After 2 years the associate licensee will need to follow the TDLR law to become a licensed auctioneer.

You may give me a call to discuss these issues further.

Lori Lemons-Campbell
Lemons Auctioneers, LLP.
(800)243-1113



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Leslie L. Kacer

From: Jason Dixon [REDACTED]
Sent: Friday, June 27, 2014 1:46 PM
To: HB3038 Interim Charge
Cc: [REDACTED]
Subject: Response to questions

Thank you for the opportunity to weigh in on questions regarding HB3038. I am providing responses to the TDLR's recent request for input on behalf of The Public Group, LLC, a Utah limited liability company that sometimes does business as Public Surplus. By way of background, Public Surplus maintains online bid boards and auction sites for government agencies to sell surplus property to the public. Our responses to the TDLR's questions are as follows:

Question 1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Response: To the extent this question asks whether an auction website like eBay, uBid, Listia, QuiBids, bitopia, Overstock, or Public Surplus should be required to have a Texas auctioneer license, the answer is clearly "No."

Online auction websites are not the sellers of the property and are simply passive conduits for exchanges between buyer and seller. Online auction sites act as middlemen between sellers and buyers and are not involved in the actual transaction between seller and buyer. Auction sites do not take possession of a seller's property or determine the terms of sale. They simply provide an electronic forum for buyers to submit bids to sellers and are not the actual seller of the item. This is consistent with positions taken by the National Auctioneer's Association and legal counsel for the North Carolina Auctioneer Licensing Board. Interpreting the law to require auctioneer licenses for online auction companies would do nothing to protect consumers where the company has no control over the item being sold.

Question 2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Response: No, to the extent this question applies to online auction sites. Online auction sites should not be required to obtain a Texas auctioneer license for the reasons stated in the Response to Question 1. This is true regardless of where the item is located.

Question 3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Response: We do not have a position on this issue at this time.

Question 4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Response: We are not an auction company and do not have a position on this issue at this time.

Question 5. *How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?*

Response: Any sale where the seller, item, or buyer is located outside the state could be considered a "sale conducted outside of the state." Moreover, even if online auction sites are considered auctioneers, an untenable assumption under the statute, every sale or auction could be considered outside of the state given that the "sale" takes place over the internet. Even for auction site companies based in Texas, the servers hosting the site may be based in other jurisdictions.

Question 6. *If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?*

Response: An improvement to the Texas Auction Law would be language clarifying the definition of an auctioneer and the scope of the licensing requirements. While it should already be clear that online auction companies are not the sellers of items posted on their site and do not meet the definition of "auctioneer," uncertainty remains in the minds of those who have not closely read the statute as to whether online auction companies are subject to auctioneer licensing requirements. Language (or rules from the TDLR) clarifying that "auctioneer" does not include online auction companies would make that clear and eliminate confusion.

We appreciate the opportunity to comment on this issue.

Sincerely,

Jason Dixon
General Counsel
The Public Group, LLC
Ph: 800-591-5546 ext. 131


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Leslie L. Kacer

From: Sample, Jim [REDACTED]
Sent: Sunday, June 29, 2014 2:14 PM
To: HB3038 Interim Charge
Subject: FW: HB 3038 (83R)

From: [REDACTED]
Sent: Monday, May 12, 2014 10:58 AM
To: Sample, Jim
Subject: Fw: HB 3038 (83R)

Sent on the Sprint® Now Network from my BlackBerry®

From: Tamala Fletcher <Tamala.Fletcher@tdlr.texas.gov>
Date: Mon, 12 May 2014 15:45:28 +0000
To: Tamala Fletcher<Tamala.Fletcher@tdlr.texas.gov>; Della Lindquist<Della.Lindquist@tdlr.texas.gov>
Subject: HB 3038 (83R)

Texas House of Representatives Speaker Joe Strauss on January 31, 2014, charged the House Licensing and Administrative Procedures Committee to “Study the implementation and possible impacts of HB 3038 (83R), including the effect it would have on multi-state auction companies, as well as business-to-business auctions.” The Texas Department of Licensing and Regulation wants to know your ideas regarding how we can best implement House Bill 3038, the impact of this legislation for Texas, and recommended changes to improve the regulation of auctions and auctioneering in Texas.

House Bill 3038 was enacted in 2013 by the 83rd Texas Legislature. It removed the live bid call framework within the definition of “auctioneer,” repealed the associate auctioneer program, changed the membership of the Auctioneer Education Advisory Board, and increased the amount of money injured consumers may recover from the Auctioneer Education and Recovery Fund. We would appreciate you sending your response to the following questions to HB3038InterimCharge@tdlr.texas.gov by June 30, 2014:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, and Etsy? Why?

Yes, If a Texas real estate license is required to sell real property located in Texas, regardless of the location or residence of the broker, then an auctioneers license should be required to sell personal property located in Texas that is consigned to be sold, regardless of regardless of location or residence conducting the auction.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Yes, Same reason as number 1.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person’s own property? Why?

No, if it is not sold on a recurring basis as defined in Chapter 1802.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Any employee that has the authority to sign a seller or consignment contract or negotiate the terms of the contract.

5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

A sale or auction where the property is located outside of Texas.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Jim Sample
Tx License #6773

Later this year TDLR will host a summit to discuss HB 3038 implementation, the HB 3038 interim charge, and possible changes to the Texas auctioneer law. You can sign up to receive TDLR Email Updates to be notified about the summit and about any changes or updates to the Texas Auctioneer Program. Thank you for your assistance with the HB 3038 interim charge by providing your feedback to us.

Leslie L. Kacer

From: Brent Graves - UC Alliance Auction & Realty [REDACTED]
Sent: Sunday, June 29, 2014 9:52 PM
To: HB3038 Interim Charge
Subject: From Texas Auctioneer's PAC
Attachments: AUCPAC Response to 3038.docx; Brent Graves.vcf

Thank you for accepting this submission, please contact me with any additional questions or notices of upcoming hearings regarding HB3038.

Sincerely,
Brent R. Graves
Broker/Auctioneer
United Country - Alliance Auction & Realty
Office: (254) 965-4040
Mobile: (254) 459-1111
Stephenville, Texas
www.AllianceAuctioneers.com

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Texas Department of Licensing and Regulation
Via Email: HB3038InterimCharge@tdlr.texas.gov

To Whom It May Concern:

Please accept the following as the response to the questions concerning the interim charge of HB3038 formulated and submitted by AUCPAC, the Political Action Committee serving the auctioneers of Texas. Should you require additional information, clarification or have any questions, please feel free to contact me at [REDACTED] or at my office at 254-965-4040.

- 1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?**

Answer: It depends. No, if an individual consumer places their personal items on a website and allows for competitive bid this is a matter of that person's personal property right to market and sell their own property. Yes, if that person is acting on behalf of others and posting property on these third party sites for any form of consideration. If one accepts consideration for these services they are acting as an auctioneer who, in this state is required to have a license.

- 2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?**

Answer: Absolutely. It matters not where the buyer is located. It matters not where the seller resides. If legally owned property is located in Texas and is offered for sale by competitive bidding utilizing a third party contractor (Auctioneer) then it is only fair to the public, for the public's protection, to require all contractors of auction services to be licensed. Venue (ie: Live, Online, Sealed bid, etc) matters not as each contractor should be held to professional standards that have been set forth in Texas for nearly four decades.

- 3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?**

Answer: The law in Texas has always allowed individuals the opportunity to auction their own property but established that they could not hold an auction of their own property more than one time every twelve months. As many things have changed since the original Auctioneer law of 1978 it was recommended that HB3038 increase that interval to no more than one time every 24 months. Today, there are individuals who trade equipment, sell stock show animals, antiques and other property that utilize the loophole and the internet to circumvent the requirement of an auctioneer's license. It is known that some of these individuals run bids, utilize skills and otherwise degrade the auction profession. While the property is their own, they are taking advantage of the buyer utilizing technology and the requirement that they would be required to pay a seller in the event they run past the genuine bidder.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Answer: Any individual who is soliciting, negotiating or executing a binding auction marketing services contract. The owner of the auction company or the designated manager who would hold personal responsibility should a complaint be filed. Today we have magazine advertising representatives soliciting, negotiating and executing online auction contracts that market and sell property located in Texas. If this is the professional standard that the State of Texas allows it must further be debated why an individual is required to have 80 classroom hours, background check, pass a written test and maintain 6 continuing education hours annually to conduct live auctions. Currently, there is no requirement for an individual to be a proficient bid caller to receive an auctioneer's license. The objective of the license is to assure that those who are soliciting, negotiating and managing auction services of property owned by others have basic skills and moral character that is required to be granted fiduciary responsibilities.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Answer: As auctions are commonly advertised to sell property "AS IS – WHERE IS" it should be pretty simple. If the property is located in a state other than Texas it would be considered "Outside of this state". If a buyer from Oklahoma purchases a vehicle from a licensed dealership in Dallas and finds out they were misled by the salesman the buyer's recourse would be against the dealer through TxDMV, not Oklahoma, as the dealership is regulated by the State of Texas because they are located in Texas. Should you reverse the proceeding scenario a Texas buyer would not have any recourse to contact the TxDMV if they bought a vehicle from an Oklahoma dealer, rather their complaint would need to be addressed to the OkDMV. Additionally, it matters not whether the buyer purchased the vehicle in person, online, over the phone or by U.S. Mail; the appropriate regulatory agency would still be the prevailing authority because of the location of the property and subsequent licensing laws set forth by the respective states.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Answer: As one of the authors of HB3038 I can tell you that many, many hours, meetings, conference calls, emails and input from TDLR went into writing this bill. Additionally, the authors who have over 75 years' experience and over 10,000 auctions between them, an enormous amount of thought went into writing HB3038 to protect the public, the industry and the professional auctioneer. In meetings with TDLR it was recommended that we omit the Associate Auctioneer license as we did. If I could go back and rewrite the bill there would have been a 12 month grandfather clause for the

Associate licensees. However, that is water under the bridge since the bill passed and was signed into law one year ago this month. In short, I think HB3038 is well crafted and is the premier Auction Law in the U.S., now it is time to cease the political wrangling and begin writing the rules and enforce the law as it is no longer a bill, it is the LAW.

Sincerely,

A handwritten signature in black ink, appearing to be 'Brent R. Graves', written over a horizontal line.

Brent R. Graves, AUCPAC Chairman
Texas Auctioneer's License 13507

Leslie L. Kacer

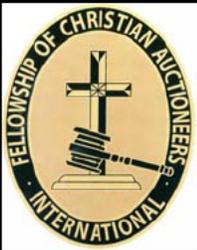
From: Ron Moore [REDACTED]
Sent: Monday, June 30, 2014 2:03 PM
To: HB3038 Interim Charge
Subject: FW: Bill HB3038 (83R)

Answers to question below in red.

Ron Moore
President
Plant & Machinery, Inc.
Texas Auctioneer #7314

1-800-AUCTION

From: Fellowship of Christian Auctioneers International [mailto:[REDACTED]]
Sent: Monday, June 30, 2014 1:35 PM
To: [REDACTED]
Subject: Bill HB3038 (83R)



Fellowship of Christian Auctioneers International

Prayer Request

Attn: FCAI Members

This is a reminder that comments on HB3038(83R) are due today.

Please send in your comments.

May God bless you,
Alvin Kaddatz

Texas House of Representatives Speaker Joe Strauss on January 31, 2014, charged the House Licensing and Administrative Procedures Committee to "Study the implementation and possible impacts of HB 3038 (83R), including the effect it would have on multi-state auction companies, as well as business-to-business auctions." The Texas Department of Licensing and Regulation (TDLR) wants to know your ideas regarding how we can best implement [House Bill 3038](#), the impact of this legislation for Texas, and recommended changes to improve the regulation of auctions and auctioneering in Texas.

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1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why? **These sites are impossible to control, so as a practical matter, I don't think it would work.**
2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why? **Yes, single events such as these are easy to identify and potential violators easy to locate.**
3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why? **Yes, because otherwise the buyers are not protected by the law and not able to draw from the fund established to offset damages caused by unprofessional conduct.**
4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why? **Just the bid caller. Management may be great business people but they don't necessarily need to call bids.**
5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why? **If the assets are physically located within the borders of Texas, but the auction is conducted physically (slide sale just across the border for example) or virtually (via the web) from a location outside of this state (the auctioneers offices in Chicago for example) then that is "an auction conducted outside of this state".**
6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why? **I would insure that all reporting of infractions are absolutely ANONYMOUS, so that auctioneers will actually report the violations. Otherwise, this is a big waste of time because no one wants to be the "bad guy" and report someone for a violation if they think it will somehow be revealed who did it. The governing agency should establish a procedure for enforcing the rules by hiring field agents like other states such as South Carolina do.**

Later this year TDLR will host a summit to discuss HB 3038 implementation, the HB 3038 interim charge, and possible changes to the Texas auctioneer law. [TDLR email update](#) subscribers will be notified about the summit and about any changes or updates to the Texas Auctioneer program.

Thank you for your assistance with the HB 3038 interim charge by providing your feedback to us.

Questions? Post them on [TDLR's Facebook page](#), [tweet us](#) or email HB3038InterimCharge@tdlr.texas.gov

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Leslie L. Kacer

From: Kaddatz Equipment [REDACTED]
Sent: Monday, June 30, 2014 2:11 PM
To: HB3038 Interim Charge
Subject: HB 3038 (83R)

Here is my input on Bill HB3038(83R0)

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Yes. This an auction and should be done by a licensed auctioneer. Consumers need protection.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Yes. Same as above.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Yes. It will protect the purchaser at the auction.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Anyone calling bids or negotiating contracts. Why? It will protect the consumers.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Texas law should not apply to auctions outside the state.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Payments will be made out of the Recovery Fund to the seller or consignor if there is not an auction contract.

The TDLR Commissioners recently ruled that the auctioneer did not have to pay because there was not a contract. (Mitchell case# AUC20120007893)

Sincerely,
Alvin Kaddatz

Kaddatz Auctioneering & Farm Equipment Sales
535 HCR 4223
Hillsboro, TX 76645
254-582-3000 (Phone)
254-582-1034 (FAX)
www.kaddatzequipment.com

"But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint." Isaiah 40:31

Leslie L. Kacer

From: Cold Creek Auction [REDACTED]
Sent: Monday, June 30, 2014 2:53 PM
To: HB3038 Interim Charge
Subject: Addressing the Questions

To the concerned:

I have seen these questions asked and addressed by many fellow auctioneers since the intended implementation of HB3038 and the following answers are my humble option to such.

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Answer: YES, however the following exemptions may apply.

- a. *The entity (person or business) listing the items for auction is not in the business of selling, reselling or liquidating items such as the listed items. (i.e.: An individual that is selling one or two items every once in a while)*
 - b. *The entity does not secure more than a flat dollar amount of gross income per year through any means of auction. This can be controlled by means of electronic monitoring by the listed websites and would need the support of the websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Much like asking the web companies to have a place for the registered users to provide their license information. If this information is not provided, then they would be limited to a flat amount (\$10,000) gross sales within any 12 month period. (by limiting the time frame and money you would in fact limit unlawful business operations and non-payment of taxes)*
2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Answer: YES, to have an auction in Texas for Texas customers an auction license is required unless it is without compensation for charity regardless of the means of conducting the auction. (I am a pilot licensed by the FAA under a Private Pilot rating. I am NOT allowed to take compensation for flying any person or product anywhere. I am not for hire because I do not hold a Commercial Pilot rating or an Airline Transport Pilot rating. In this example I have certain unalienable rights, though am limited only by law.)

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Answer: NOT if it is only once within a 12 or 24 month period and

- a. *The entity (person or business) listing the items for auction is not in the business of selling, reselling or liquidating item such as the listed items. (i.e.: An individual that is selling one or two items every once in a while)*

b. *The entity does not secure more than a flat dollar amount (\$10,000) of gross income per year through any means of auction. (as noted above, by limiting the time frame and money you would in fact limit unlawful business operations and non-payment of taxes)*

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Answer: Only the Auctioneer whom is owners of the business and any contract bid callers. All consignment contracts should still require the Auctioneer's (owner) signature in order to be deemed valid. The auctioneer recovery fund should not be held responsible for unlicensed auction companies, auctioneers or invalid contracts.

Thank you for your time in addressing these concerns, if I can be of any assistance please feel free to contact me.

Tracy L. Hagen – TX Lic# 17318
Cold Creek Auction, LLC
301 Main Plaza, #375
New Braunfels, Texas 78130
888-708-2877

Leslie L. Kacer

From: [REDACTED] on behalf of Travis Kaddatz
[REDACTED]
Sent: Monday, June 30, 2014 2:53 PM
To: HB3038 Interim Charge
Subject: Feedback for TDLR's Auctioneers Program

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

No, I do not believe that the hosting sites need to be licenced but I do believe that individuals who take consignments and put items on the sites should be. I believe the consumer needs protection from people who are brokering or representing them.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Yes. This would give the consumer recourse if they are aggrieved. I also believe if the buyer is out of state the online auction company should be required to have a license.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property?

Not if it is not recurring. However if they conduct more than one in 24 mo they should have a licence.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Any bid callers or sales agents that solicit or negotiate contracts because this would create accountability to the auction company and recourse for the consignor.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

The property is physically located in another state.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

I believe the bigger issue is brokerage and consignment of property not necessarily the "auctioneer". I believe if one is selling items for for a person or entity they should be licenced.

--

Thank you,

Travis Kaddatz, CAI



GM, Auctioneer, Appraisals

254-205-2710 (direct)

254-582-3000 (office)

254-582-1034 (fax)



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Leslie L. Kacer

From: David Nunn [REDACTED]
Sent: Monday, June 30, 2014 2:58 PM
To: HB3038 Interim Charge
Subject: My response...NO!
Attachments: Seller model letter.docx

See attached letter please.

David Nunn

Nunn's Guns

FFL#5-75-231-01-7E-23952 ~ 8550 State Highway 34 North ~ Wolfe City, TX
75496

Phone 903-450-3943, Email [REDACTED]

Retired Master Certified Peace Officer/Instructor ~ Life Member NRA

Pauline Easley
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711
Facsimile: 512/475-3032

Email: erule.comments@tdlr.texas.gov

Dear Ms. Easley,

We write to comment on impact the newly changed auction laws in Texas would have on multi-state auction companies and business to business auctions. First, let us give you some background about us and our business. I operate a small, one-man licensed gun shop. I handle transfers for customers who have purchased guns on the internet, and I sell guns on the internet, mostly through Gunbroker.

While we do not function as a web-based company that would be subject to Texas' regulation as an auction company under the new regulation, we still have strong opinions in this regard. Specifically, there are six questions raised by the Texas Department of Licensing and Regulation for which responses are requested.

Our responses are as follows:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Response: No. There is no need for regulations imposing these types of requirements. In our experience, online consumer auction and sales sites work well. Every time we have had a problem with a non-paying buyer or other similar situation, it has either been addressed through application of the regular rules for use of the site, or the customer service desk assisted us with the problem. In a nutshell, consumers are already being treated well on those sites and there is no need for more regulation.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Response: No. This law would require most consumer auction websites with national user bases to employ a Texas auctioneer. A Texas auctioneer would be a detriment to all involved here:

-- No value to website company. The auctioneer would not know the first thing about running a web-based auction, which occurs according to computer algorithms, so no value would be added.

-- Extreme pain to website company. Employing a licensed auctioneer would be expensive, especially for small businesses. If all of the many states (26 at last count) forced these sites to employ a local auctioneer, not only would this be extremely expensive, it would also result in the website company having to pay taxes in each such state, when no tax locus currently exists now.

-- Pain for users (with no upside). All these costs would have to be passed on to users of the website, which would result in pain for consumers with very little upside.

-- Pain for auctioneer. As noted above, this would be an auctioneer who would not add any value to the computerized process. Most auction statutes require the auctioneer to be a full-time employee of the auction company, so this person would not be able to have another job. Who would want such a position, where one is basically useless?

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Response: No. A person should have the right to dispose of his own property in any way he or she sees fit, without intervention by the government. It makes very little sense to impose a complex regulatory system on such individuals, who are likely to be doing this only once anyway.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Response: We do not have a comment on this issue.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Response: We do not have a comment on this issue.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Response:

We would exempt all internet auctions and sales from the Texas auction laws. As noted above in items #1 and #2, we believe extending these laws to Internet transactions would only serve to increase the costs to consumers without any significant benefits for consumers.

Should you have further questions, please do not hesitate to contact me at phone number 903-450-3943, or email [REDACTED].

Sincerely,

David Nunn

Nunn's Guns

Leslie L. Kacer

From: Erule Comments
Sent: Monday, June 30, 2014 3:57 PM
To: Michael A. Kelley; Della Lindquist
Subject: FW: No auctioneer needed

I believe this comment is in regards to HB 3038 as well.

*Best Regards,
Pauline Easley
Legal Assistant
Office of the General Counsel
TX Dept. of Licensing and Regulation
(512) 463-8179-office
(512) 475-3032-fax
pauline.easley@tdlr.texas.gov*

From: David Nunn [mailto:]
Sent: Monday, June 30, 2014 3:01 PM
To: Erule Comments
Subject: No auctioneer needed

Nunn's Guns
FFL#5-75-231-01-7E-23952 ~ 8550 State Highway 34 North ~ Wolfe City, TX 75496
Phone 903-450-3943, Email [REDACTED]
Retired Master Certified Peace Officer/Instructor ~ Life Member NRA

Pauline Easley
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711
Facsimile: 512/475-3032

Email: erule.comments@tdlr.texas.gov

Dear Ms. Easley,

We write to comment on impact the newly changed auction laws in Texas would have on multi-state auction companies and business to business auctions. First, let us give you some background about us and our business. I operate a small, one-man licensed gun shop. I handle transfers for customers who have purchased guns on the internet, and I sell guns on the internet, mostly through Gunbroker.

While we do not function as a web-based company that would be subject to Texas' regulation as an auction company under the new regulation, we still have strong

opinions in this regard. Specifically, there are six questions raised by the Texas Department of Licensing and Regulation for which responses are requested. Our responses are as follows:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Response: No. There is no need for regulations imposing these types of requirements. In our experience, online consumer auction and sales sites work well. Every time we have had a problem with a non-paying buyer or other similar situation, it has either been addressed through application of the regular rules for use of the site, or the customer service desk assisted us with the problem. In a nutshell, consumers are already being treated well on those sites and there is no need for more regulation.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Response: No. This law would require most consumer auction websites with national user bases to employ a Texas auctioneer. A Texas auctioneer would be a detriment to all involved here:

-- No value to website company. The auctioneer would not know the first thing about running a web-based auction, which occurs according to computer algorithms, so no value would be added.

-- Extreme pain to website company. Employing a licensed auctioneer would be expensive, especially for small businesses. If all of the many states (26 at last count) forced these sites to employ a local auctioneer, not only would this be extremely expensive, it would also result in the website company having to pay taxes in each such state, when no tax locus currently exists now.

-- Pain for users (with no upside). All these costs would have to be passed on to users of the website, which would result in pain for consumers with very little upside.

-- Pain for auctioneer. As noted above, this would be an auctioneer who would not add any value to the computerized process. Most auction statutes require the auctioneer to be a full-time employee of the auction company, so this person would not be able to have another job. Who would want such a position, where one is basically useless?

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Response: No. A person should have the right to dispose of his own property in any way he or she sees fit, without intervention by the government. It makes very little sense to impose a complex regulatory system on such individuals, who are likely to be doing this only once anyway.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Response: We do not have a comment on this issue.

5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Response: We do not have a comment on this issue.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Response:

We would exempt all internet auctions and sales from the Texas auction laws. As noted above in items #1 and #2, we believe extending these laws to Internet transactions would only serve to increase the costs to consumers without any significant benefits for consumers.

Should you have further questions, please do not hesitate to contact me at phone number 903-450-3943, or email [REDACTED].

Sincerely,

**David Nunn
Nunn's Guns**

Leslie L. Kacer

From: Terry Westrum
Sent: Monday, June 30, 2014 3:15 PM
To: HB3038 Interim Charge
Subject: responses on Facebook

We received the following responses on Facebook:

Jeromy Murphy: "Should Tdlr be using a facebook poll for research? No. EBay is a proven service that benefits the public. Requiring a license for online auctions would not have a public benefit."

Steve Wilson: "1. No. eBay is not auctioning items. Sellers are. eBay is simply the conduit or platform that those sellers choose to use."

Jennifer Midkiff: "So many people are ignorant to what an auctioneer is and what their job entails. Legally and all the education and things they have to do. They simply don't talk fast and sale things. There are regulations set on force for tow truck drivers when anyone can pick up a car and haul it. There are regulations set in place for barbers / beauticians when most could do it their self and so on. Each field has expertise and education that is involved , including auctioneer. I think the state of texas has dropped the ball in educating the general public on what an auctioneer is and what they are responsible for . I think when people truly understand then they would agree with the fact of course a licensed auctioneer needs to be used for ANY type of auction. No questions asked. A licensed auctioneer can choose not to charge commission for benefits and such but one is needed vs anyone doing it. If you are gonna regulate the profession that these guys need to be licensed then you need to do it 100%.

1. Education to the public
2. Enforcement across the board"

Steve Wiggins: "TDLR has a history of backwards thinking. They make rules then decide how to enforce them. Instead they need to have an enforcement strategy ready before the rule is made."

Edward Maldonado: "No, because that would be ridiculous. How would you enforce that without adding more employees or adding more duties to an existing employee's workload? What's the cost-benefit? The fact that someone with no "formal" training can conduct an auction may be attributed to the fact that one doesn't need formal training and licensure to adequately perform the job. You bid \$5 and another person bid \$10, okay the one that bid \$10 wins. Wow! That's a no brainer. I guess I am not understanding the risk that exists with the current system of allowing private citizens to auction their personal goods on eBay and other similar sites without enlisting the aid of a "professional." I'm concerned that we are looking for more ways to criminalize victimless behavior. Whatever happened to "small government"?"

Joshua Cartwright: "NO"

Tonia Jacob: "They just want more of our hard earned money....."

Don Ralston: "placing bids is the same thing to me as an auction"

Don Ralston: "that sounds almost like ebay and they don't have one do they??"

Rey Ramirez: "In other words- Should the State be allowed to take money from more people that are just doing their job"

Linda Pennington Long: "No"

Keith Faske: "I think Jennifer Midkiff is correct to say that all people that conduct an auction need to have a license. I am a member of the Texas Auctioneers Association and have voiced my opinion to Jim Sample and the rest of the Association for years. I think even sheriff sales should have a license to conduct an auction. I cannot where a gun and hold a badge unless I have a license so too should be the sheriff when having an auctioneer license. Real estate companies also should have a license when they take "bids" for property."

Laurie Burk McPherson: "No"

Leslie L. Kacer

From: Ken Holt [REDACTED]
Sent: Monday, June 30, 2014 3:18 PM
To: HB3038 Interim Charge
Subject: Ritchie Bros. Auctioneers' Responses to Questions
Attachments: 140630 RBA Response to TDLR Interim Study Questions.docx

Dear Sir or Madam,

Please find attached Ritchie Bros. Auctioneers' responses to the questions presented by the Department in its May 14, 2014 email and notice.

Please let me know if we may answer any questions or provide any additional information.

Sincerely,

Kenneth H. Holt
Partner
Dow Golub Remels & Beverly, LLP
9 Greenway Plaza, Suite 500
Houston, Texas 77046
(713) 526-3700
(713) 526-3750 (fax)
[REDACTED]
www.dowgolub.com



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July 9, 2014

To: The Texas Department of Licensing and Regulation

Re: Responses by Ritchie Bros. Auctioneers (America), Inc., to TDLR's May 14, 2014, request for responses to interim study questions

Ritchie Bros. Auctioneers (America), Inc., on behalf of itself and its affiliated entities (collectively, "RBA"), provides the following responses to the questions presented in the Department's May 14, 2014 email.

Ritchie Bros. is the world's largest auctioneer of heavy equipment and trucks. In 2013, US\$3.8 billion of heavy equipment was bought and sold at Ritchie Bros. unreserved public auctions. In addition, RBA's wholly-owned subsidiary AssetNation, Inc., operates a suite of online marketplaces, including equipmentone.com.

INTRODUCTION

Ritchie Bros. believes that much of the confusion, both for the Department and for the marketplace, caused by the 2013 amendments to Chapter 1802 of the Occupations Code can be eliminated by a return to the pre-2013 amendment definitions of "auction" and "auctioneer." The regulatory structure that existed before the 2013 amendments effectively protected Texans for decades, and the 2013 amendments have not enhanced the protection of auction participants. In fact, it is unclear what additional threat of harm the 2013 amendments were designed to remedy.

The 2013 amendments, particularly the amendments to the definitions of "auction" and "auctioneer," have expanded the licensing requirement to include individuals that have a very tenuous relationship to the core auction function of bid calling and have potentially expanded the licensing requirement to online sellers and operators of auction websites. This expanded licensing requirement should be reversed because (1) it does not materially enhance protection of the public, (2) both the licensing and enforcement activities that will be required will likely overwhelm the already strained resources of the Department, (3) it places unnecessary additional administrative burdens on auction companies that operate in more than one state, (4) the training and examination requirements for an auctioneer license are inapplicable to online sellers and auction website operators, (5) the enforcement, particularly with respect to online sellers and auction website operators, would be practically impossible, and (6) it places those Texas-based auction website operators at a material disadvantage in competing against other auction websites that are operated from other states or countries.

RESPONSES TO QUESTIONS

- 1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?**

Ritchie Bros. Response:

Ritchie Bros. does not believe that an auctioneer license should be required to conduct an online auction in which a consumer places competitive bids to purchase products. An auctioneer license should not be required of either the seller or the venue.

An auctioneer license should not be required of sellers on venues like those listed above. Such a licensing requirement would confuse the role of seller and auctioneer. The education and examination requirements for an auctioneer license are inapplicable to sellers on these auction websites and similar online venues, like Ritchie Bros. equipmentone.com. The regulations that apply to auctioneers, which make perfect sense in the context of auctioneers at live auctions, are not applicable to sellers. See, for example, the requirements of 16 TAC 67.70(k) concerning the licensed auctioneer's obligations concerning trust/escrow accounts and disbursement of sales proceeds.

Administering a licensing requirement for all Texas sellers on these websites would be practically impossible. Millions of transactions occur each year on such venues, and doubtless many hundreds of thousands of transactions each year involve Texans as either buyers or sellers. There would be no way to effectively communicate to all Texas online sellers that they are required to have an auctioneer license before selling their own items on websites such as those listed above. And even if the requirement were to be effectively communicated, one of two things would happen; both of which would strain the Department's resources to the breaking point. If every seller were to become licensed by the department the influx of applications would overwhelm the ability of the Department to process them. Widespread compliance with a licensing requirement, however, is highly unlikely. It is more likely that the law would simply be ignored by the public, and this too would potentially lead to an influx of consumer claims that the Department does not have the resources to handle. If dissatisfied buyers were to discover that their Texas-based sellers were not licensed as required by law, they would use the Department's complaint process as additional leverage against the seller. The Department could be overwhelmed by the volume of complaints, emptying the auctioneer education and recovery fund and diverting the Department's limited time and resources away from enforcement of complaints in all other regulated occupations.

Nor should an auctioneer license be required of these online venues and others similar to them, like Ritchie Bros. equipmentone.com. This is true for two reasons. First, implementation and enforcement would be very costly and difficult. None of the companies listed above is headquartered in Texas, and none of them seems to have any substantial presence in the state.

Many online venues are operated from outside the United States.¹ The Department will have difficulty determining which, if any, of these companies must be licensed. If the statute is written to require a Texas auctioneer license for any online company that lists items located in Texas, the Department will have difficulty effectively communicating to those companies their obligation to be licensed. In fact it will be impossible. Every time a Texas resident listed an item for sale on an auction website, that website operator would have to be licensed. The Department has no way to determine every auction website on which Texas residents list items for sale. Even assuming that the Department could make such a determination and communicate the requirement to be licensed to each company operating such an auction website, the department will have great difficulty in enforcing the licensure requirement. It is doubtful whether the Department can get jurisdiction over companies that have no presence in Texas. If the department were successful in getting these companies to obtain licensure or otherwise obtain jurisdiction over them, dissatisfied buyers (whose dissatisfaction is unrelated to any purported violation of TDLR regulations) from all over the world, who have no connection to Texas, might use the Department's complaint process to gain leverage over their seller. The Department does not have the resources to assume that role.

The second issue is the matter of fairness. It is clear from the discussion in the previous paragraph that it would be unworkable to attempt to license every online auction website operator that does business with Texas buyers or sellers, regardless of where the website operator is located. However, if the Occupations Code is revised to require licensure of online auction companies with a substantial presence in Texas, this would place Texas-based companies at a clear competitive disadvantage. As a result both existing companies and start-ups would consider moving to states or countries with no licensing requirement.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Ritchie Bros. does not believe that an auctioneer license should be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas. Limiting the licensing requirement to those instances in which both the item and the potential buyer are located in Texas will not reduce the number of persons that will have to be licensed. Every item posted for sale online, regardless of where the seller is located or the item is physically located, is available for review and bidding by potential buyers in Texas and throughout the world. So the online auction of every item located in Texas would have to involve a Texas licensed auctioneer. For the reasons described in response to question no. 1, the administration of such a licensing requirement would be practically impossible.

In addition, the location of the online venue is seldom clear. The available online marketplaces are located throughout the world. In most instances, the corporate headquarters may be one place, the sales and administrative staff may be located in another state or country, and the servers upon which the website is hosted may be located in a third location. Reliance upon any

¹ Examples include eBid: London, England; Rakuten: Tokyo, Japan; Gmarket: Seoul, Korea; OZtion: Melbourne, Australia; TradeMe: Wellington, New Zealand; Mercado Libre: Buenos Aires, Argentina; Hood: Duren, Germany; and Tradus (QXL): Zug, Switzerland.

of these factors in determining whether the online venue must be a Texas licensed auctioneer would create an un-level playing field for companies that are based in or operate out of Texas. Although it may be legally possible for the Department to regulate the operators of online venues based or operated outside of Texas, as a practical matter it will be impossible. Requiring Texas-based operators of online venues to be licensed will place them at a disadvantage in comparison to their competitors in other states and countries. Potential sellers of assets located in Texas will always be free to choose one of those venues over the Texas-based venue. This will create an incentive for existing company's and start-ups to move to states such as Arkansas, Tennessee, Ohio, North Dakota, or Maine, all of which have expressly excluded online auctions from an auctioneer licensing requirement.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Ritchie Bros. believes that a distinction must be made between online auctions and live auctions.

Ritchie Bros. does not believe that an auctioneer license should be required for a person to sell his or her own property through an online marketplace, for the reasons stated in response to question no. 1 above. This is true regardless of whether the person purchased the item with the intention of reselling online or whether the person is in the business of selling items online.

With respect to live auctions, Ritchie Bros. believes that Section 1802.002(4) of the Occupations Code is an adequate and workable regulation of an auction by a person of that person's own property provided that it is assumed that for purposes of this exception that it is the owner of the property acting as the bid caller. It should be noted, however, that a straight-forward application of the plain meaning of the definition of "auctioneer" contained in Section 1802.001(5) does not permit this assumption. Section 1802.001(5) designates any person that "solicits, negotiates, or executes an auction listing contract" an "auctioneer" regardless of whether that person is a bid caller or the owner (i.e., seller) of the property being auctioned. As a result, under the 2013 amendment of the definition of "auctioneer" every seller that negotiates or executes an auction listing contract (and every seller does this) more than once every two years must be licensed. This clearly is an unworkable regulatory scheme.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Ritchie Bros. believes that the only person that should be required to hold a Texas auctioneer license is the person calling live bids at an auction of property physically located in the State of Texas at the time the auction is conducted. This was the legislative requirement before the 2013 amendments. Requiring only the bid caller to be licensed would satisfy the regulatory objective of the Occupations Code and the TDLR regulations to protect the public. By the licensed bid caller's participation in the auction, he ties himself and his license to the auction. The licensed bid caller's license number would be included in all advertising, as required by section 1802.051 of the Occupations Code and section 67.70 of the Texas Administrative Code. He would be responsible for the conduct of the auction, the receipt of the property consigned by sellers, the delivery of sold property to buyers, and the disbursement of net sales proceeds to the sellers in a

timely manner as required by section 67.70 of the Texas Administrative Code. Although the licensed bid caller can delegate tasks to those he supervises (for example, signing listing agreements, registering buyers, receiving payment, etc.) he cannot delegate the responsibility. The injured buyer or seller could file a complaint against the bid caller and have access to the auctioneer education and recovery fund. In addition, the licensed bid caller would be subject to disciplinary action by the Department.

Those working under the supervision of the licensed auctioneer need not be licensed. By holding the licensed auctioneer responsible for the conduct of the auction and compliance with the law, the onus is placed upon the licensed individual to ensure that acts performed by the unlicensed people that he supervises are performed in conformity with the Occupations Code. If there is a failure in that regard, then the Department can hold the licensed individual responsible, and an injured consumer will have recourse to the auctioneer education and recovery fund.

In addition, the definition of “auctioneer” in the current statute places an undue burden upon those organizations that have multiple auction yards throughout the state or operations in other parts of the country and around the world, while at the same time not providing any additional protection to Texas auction participants. The definition of “auctioneer” currently includes “any person who . . . solicits, negotiates, or executes an auction listing contract.” “Auction listing contract” is not defined by the Occupations Code. For those auctioneers operating as solos or in small partnerships with other auctioneers, or are operating out of only one location, this definition may not present a problem, as they are likely to be involved in the solicitation, negotiation, and execution of all auction listing contracts. For companies like Ritchie Bros., however, this definition presents substantial problems.

Ritchie Bros. owns two auction yards in Texas (in Houston and Fort Worth) and operates a third leased yard outside San Antonio. In addition Ritchie Bros. operates yards throughout the United States, Canada and the world. Ritchie Bros. employs sales staff that markets RBA’s services throughout the United States and Canada. The auction listing contracts are often executed by the seller at the corporate level. Consequently, an auction listing contract can cover assets located throughout North America and can cover a term of a year or more. At the time an auction listing contract is executed, assets may or may not be identified for auction by the seller. In those instances in which assets are identified to the contract, those assets may or may not be sold in the state in which they are located at the time the auction listing contract is signed. It depends upon the type of asset and RBA’s auction schedule.

By way of example, RBA’s salesperson working out of Lincoln, Nebraska may solicit and obtain an auction listing contract from a seller with nationwide operations whose corporate office is in Connecticut. At the time the contract is signed, no assets located in Texas are identified for sale pursuant to the contract but equipment located in New Mexico is. But because of the type of equipment it is, and RBA’s auction schedule, the assets may be moved to RBA’s Houston auction yard to be auctioned. Under these circumstances, it would be unreasonable to require the RBA salesperson in Lincoln, Nebraska to be a Texas licensed auctioneer to solicit, negotiate, and execute the auction listing contract.

Another scenario is common. Auction listing contracts with corporate sellers often function as master services agreements that are in effect for a set term (for example, one year). Throughout the term of the contract, the seller may identify assets, which may be located throughout the country, for sale at auction. Continuing the previous example, when the auction listing contract was signed with the Connecticut company no assets located in Texas were identified for sale in Texas, but the contract was to last for one year. Six months after the contract is signed, assets located in Texas are identified to be sold pursuant to the contract and are subsequently auctioned at one of RBA's Texas yards. Under these circumstances, it would be unreasonable to require the RBA salesperson in Lincoln, Nebraska to be a Texas licensed auctioneer when, at the time the contract was executed, there were no Texas assets identified for auction.

A third scenario is also common. Assume that at the time the auction listing contract was signed the seller identified in the contract assets located in Texas for auction. However, given the type of equipment and RBA's auction schedule, the seller decides that the best place to sell the assets would be at one of RBA's auction yards in Florida, and the assets are shipped from Texas to Florida to be auctioned. It would be unreasonable to require the RBA salesperson in Lincoln, Nebraska to be a Texas licensed auctioneer when the property was actually auctioned in another state.

Requiring every person that solicits, negotiates, or executes an auction listing contract that may ultimately involve the auctioning of assets located in Texas to be a Texas licensed auctioneer, regardless of whether they call bids in Texas, operate out of Texas, make sales calls to Texas, or ever even visit Texas adds an enormous administrative burden to companies like RBA and needlessly increases their cost of business. The protection of the public has not been increased by requiring every person that solicits, negotiates or executes the auction listing contract to be licensed. Requiring bid callers to be licensed auctioneers provides sufficient protection of the public.

5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

“A sale or auction conducted outside of this state” as stated in Section 1802.002(a)(12) of the Occupations Code is any auction in which the property being sold is physically located outside the State of Texas at the time the auction is conducted. This definition is consistent with other provisions of the Act. In Section 1802.051(a) the Occupations Code provides that “a person may not act as an auctioneer of real or personal property in this state unless the person holds a license issued by the executive director under this chapter.” This provision implies that both the person acting as auctioneer and the property being auctioned must be located in the State of Texas before the licensing requirement applies. This conclusion is further supported by the language of Section 1802.051(b), which provides “[a]n auctioneer who advertises to conduct an auction in this state shall provide the auctioneer's name and license number in the advertisement.” This provision implies both that the auction and the advertising for the auction will occur within the State of Texas.

Defining “a sale or auction conducted outside of this state” as being any auction in which the property being sold is physically located outside the State of Texas at the time the auction is

conducted would greatly simplify enforcement. The location of the property being sold at the time of the auction can be easily ascertained. Other factors that could be considered to determine whether a sale or auction is conducted outside of this state are the location of the bidders, the seller, and the auctioneer. None of these factors, however, can necessarily be easily determined. The location of bidders cannot be easily determined in either online auctions or live auctions at which bidders may participate over the internet via simulcast. Bidders could participate from anywhere in the world. The location of the seller is also not always readily determined. Many sellers are large corporations with operations in various locations throughout the United States and the world. Ascertaining whether such entities were Texas residents would be a time consuming, fact driven inquiry. The same is true of the location of the entity operating an auction website. The jurisdiction of incorporation, the headquarters office, and the administrative offices may be in different states, while the servers on which the website is hosted may be located in yet another state or country. As with sellers, determining whether the auction website operator is a resident of Texas would be a time consuming and fact driven inquiry.

In addition, asserting regulatory authority over the sale of property located in other states may bring the Department into conflict with regulators in other states. The regulatory body of the state in which the property is located would likely assume regulatory authority over the auction. If the Occupations Code were to grant the Department authority over the same auction, it would create confusion for the participants and potentially damage comity between the states.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

RBA would make the following global changes:

- 1) *The definition of auctioneer should be tied back to bid calling and should not reference auction listing contracts.*

RBA believes that the definition of “auctioneer” contained in section 1802.001(5) of the Occupations Code should be amended to read as follows:

- (5) “Auctioneer” means any person who sells or offers to sell property at auction, with or without receiving consideration, as a bid caller;

Much of the confusion arising out of the 2013 changes to the Occupations Code was the result of the change to the definition of “auctioneer” contained in section 1802.001(5). The previous definition of an auctioneer was sufficient to require licensure of the appropriate individuals and to adequately provide for the protection of the consumer. Consumer protection was not enhanced by the 2013 changes to the definition.

- 2) *Section 1802.002(a) should be revised to include a blanket exclusion for internet auction websites.*

RBA believes that the following exception should be added to section 1802.002 of the Occupations Code:

(13) a sale or auction in which the competitive offers or bids are made exclusively via the internet.

As discussed at length above, the application of the traditional auctioneer licensing requirement to purely online activity will result in enormous administrative difficulties for the Department and confusion in the marketplace. The best way to avoid this inevitable result is to exempt entirely from the licensing requirement all sales and auction activity conducted exclusively online. This exclusion, as worded, would still make auctions, conducted by a bid caller in Texas that are simultaneously accessed by bidders via the internet, subject to regulation by the Department under the Occupations Code. This is the approach taken by the majority of states that have addressed the issue of whether to require an auctioneer license for online auctions (those states are Arkansas, Tennessee, Ohio, North Dakota, and Maine).

3) *Section 1802.001(3) should be revised to define “auction” without reference to method, format or venue.*

RBA believes that the definition of “auction” contained in section 1802.001(3) of the Occupations Code should be amended to read as follows:

(3) “Auction” means the sale of property by competitive bid;

This amendment would change the definition of “auction” back to its pre-2013 amendment definition. This amendment excluding any reference to “method, format, or venue” would be consistent with the addition of the amendment proposed in 2) above to add an exclusion for sales or auctions conducted exclusively via the internet. An ambiguity in the statute would potentially exist if 1802.001(3) were left un-amended, while exclusion 1802.002(13) were added. With a return to the prior definition, the regulatory safeguards that have served Texans so well for decades would remain intact.

If suggested amendments 1 through 3 above are not adopted, then RBA believes the following amendments should be made.

4) *Section 1802.002(4) defining the exclusion of the personal sale of property should be amended.*

RBA believes that the following exception should be added to section 1802.002 of the Occupations Code:

(14) a sale or auction conducted by any person of the person's property in which the competitive bids or offers are made solely via the internet;

This amendment would exclude from the licensing requirement those persons that sell their used property solely via the internet. Thus individual sellers on websites like eBay and RBA's equipmentone.com would not be required to obtain an auctioneer license.

- 5) *The definition of auctioneer should exclude any reference to solicitation or negotiation of an auction listing contract.*

RBA believes that the definition of “auctioneer” contained in section 1802.001(5) of the Occupations Code should be amended to read as follows:

- (5) “Auctioneer” means any person who:
- (A) sells or offers to sell property at auction, with or without receiving consideration; or
 - (B) executes an auction listing contract; excluding, however, the owner of the property to be sold.

This amendment would permit unlicensed individuals to perform certain tasks regarding an auction listing contract but would require that a licensed individual actually sign the contract. For example, a salesperson may solicit and negotiate certain terms of the auction listing contract or an employee at the auction yard may assist a seller in completing an auction listing contract, but a licensed auctioneer would execute the auction listing contract before it would become binding on the seller. This would ensure that a qualified and licensed individual had reviewed the contract and agreed to its terms. This amendment would also exclude application of the licensing requirement to the seller (i.e., owner) of the property to be auctioned.

- 6) *A definition of “auction listing contract” should be added to section 1802.001 of the Occupations Code.*

RBA believes that the following definition should be added to section 1802.001 of the Occupations Code:

- (14) “Auction listing contract” means an agreement between the auctioneer and the seller that authorizes the auctioneer to conduct an auction of real or personal property and that sets out the terms of the agreement and the rights and responsibilities of each party; provided, however, that an agreement will not be considered to be an Auction Listing Contract until such time as either (i) specifically described property is identified with the contract or (ii) any property is sold or offered for sale pursuant to the contract.

This definition would clarify the point at which a Texas licensed auctioneer must be involved in the contracting process to sell property in Texas. Without this clarification it is unclear whether all auction listing contracts signed by auction companies that operate in more than one state or country must be solicited, negotiated and executed by a Texas licensed auctioneer on the off chance that some property may be sold in Texas as some time during the term of the contract.

- 7) *A definition of “a sale or auction outside of this state” should be added to section 1802.001 of the Occupations Code.*

RBA believes that the following definition should be added to section 1802.001 of the Occupations Code:

(15) “A sale or auction conducted outside of this state” means any sale or auction of property that, at the time of the sale or auction, is physically located outside the State of Texas.

Adding this definition would provide the Department with a bright line, easily administered standard for determining whether the auction is subject to regulation in Texas.

Leslie L. Kacer

From: Erule Comments
Sent: Monday, June 30, 2014 3:55 PM
To: Michael A. Kelley; Della Lindquist
Subject: FW: HB3038
Attachments: gunbroker auctioneer.docx

This comment was sent to the erule comments folder.

Best Regards,
Pauline Easley
Legal Assistant
Office of the General Counsel
TX Dept. of Licensing and Regulation
(512) 463-8179-office
(512) 475-3032-fax
pauline.easley@tdlr.texas.gov

From: Independence Firearms - Keith, Mgr. [<mailto:> ]
Sent: Monday, June 30, 2014 3:37 PM
To: Erule Comments
Subject: HB3038

Attached is our input on HB3038. Thank you for your time.

Keith Payne
Independence Firearms
Big Dog Guns, LLC.
979.421.9677

Pauline Easley
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711
Facsimile: 512/475-3032

Email: erule.comments@tdlr.texas.gov

Dear Ms. Easley,

We write to comment on impact the newly changed auction laws in Texas would have on multi-state auction companies and business to business auctions. First, let us give you some background about us and our business. We are currently based in Somerville, TX, and had been based out of Brenham, TX for several years prior to our current location. We have been in the firearms industry for 16+ years, and have been doing business on gunbroker.com since their inception. We currently have over 1200 auctions listed with gunbroker.com, and have sold tens of thousands of items on gunbroker with little, or no problem, that we could not rectify with a phone call or email.

While we do not function as a web-based company that would be subject to Texas' regulation as an auction company under the new regulation, we still have strong opinions in this regard. Specifically, there are six questions raised by the Texas Department of Licensing and Regulation for which responses are requested.

Our responses are as follows:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Response: No. There is no need for regulations imposing these types of requirements. In our experience, online consumer auction and sales sites work well. Every time we have had a problem with a non-paying buyer or other similar situation, it has either been addressed through application of the regular rules for use of the site, or the customer service desk assisted us with the problem. In a nutshell, consumers are already being treated well on those sites and there is no need for more regulation.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

Response: No. This law would require most consumer auction websites with national user bases to employ a Texas auctioneer. A Texas auctioneer would be a detriment to all involved here:

-- No value to website company. The auctioneer would not know the first thing about running a web-based auction, which occurs according to computer algorithms, so no value would be added.

-- Extreme pain to website company. Employing a licensed auctioneer would be expensive, especially for small businesses. If all of the many states (26 at last count) forced these sites to employ a local auctioneer, not only would this be extremely expensive, it would also result in the website company having to pay taxes in each such state, when no tax locus currently exists now.

-- Pain for users (with no upside). All these costs would have to be passed on to users of the website, which would result in pain for consumers with very little upside.

-- Pain for auctioneer. As noted above, this would be an auctioneer who would not add any value to the computerized process. Most auction statutes require the auctioneer to be a full-time employee of the auction company, so this person would not be able to have another job. Who would want such a position, where one is basically useless?

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Response: No. A person should have the right to dispose of his own property in any way he or she sees fit, without intervention by the government. It makes very little sense to impose a complex regulatory system on such individuals, who are likely to be doing this only once anyway.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Response: We do not have a comment on this issue.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Response: We do not have a comment on this issue.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Response:

We would exempt all internet auctions and sales from the Texas auction laws. As noted above in items #1 and #2, we believe extending these laws to Internet transactions would only serve to increase the costs to consumers without any significant benefits for consumers.

Should you have further questions, please do not hesitate to contact me at

[REDACTED]

Sincerely,

Keith Payne

Independence Firearms

Leslie L. Kacer

From: James Hines [REDACTED]
Sent: Monday, June 30, 2014 4:01 PM
To: HB3038 Interim Charge
Cc: Greg DePasquale
Subject: TDLR: Auctioneers Program
Attachments: TDLR Response.pdf

TX Dept. of Licensing and Regulation (TDLR),

Copart submits the attached response to TDLR's request for feedback on the Auctioneers Program. Thank you for the opportunity to provide comments on this issue.

Respectfully submitted,

James Hines
Director of Government and Regulatory Affairs
Copart
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Dallas, TX 75254
(972) 391-5390 Office

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June 30, 2014

Michael Kelley
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, TX 78711

Re: Auctioneers Program

Dear Mr. Kelley:

Copart, Inc. submits the following comments in response to questions from the Texas Department of Licensing and Regulation (TDLR) on the implementation and impact of House Bill 3038.

A. Copart Overview

Copart, Inc. is a global leader in the salvage auto auction business. Copart offers a range of services for processing vehicles and selling them over the Internet through its online auction technology platform. Copart sells vehicles for a variety of consignors including banks, finance companies, rental car companies, and the insurance industry. Copart also sells vehicles for franchised and independent auto dealers through its Copart Dealer Services division. Lastly, Copart also sells vehicles for the general public through a service called Copart Direct.

B. TDLR Questions Regarding House Bill 3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

No. A Texas auctioneer license should not be required to conduct an online vehicle auction in which a consumer places competitive bids to purchase a vehicle. The training and issues addressed through Texas auctioneer training are simply not applicable, and in fact are irrelevant, to an online vehicle auction. Indeed, Texas auctioneering schools are mostly geared toward traditional auctioneering for livestock, antiques, real estate, and auction houses.¹

In an online auction environment, where the auction is conducted by a computer running software code that is able to perform the auction process without the need for human involvement, many if not all of the issues that could arise in a traditional live auction are non-existent in a computer run auction event. In an online auction,



collusion between the auctioneer and a bidder cannot occur because the computer is not able to conspire to collude and cannot be bribed. Likewise, collusion amongst bidders is rendered practically impossible because online auctions enable bidders from around the world to participate in the auction process, and this aspect of online auctions frustrates the ability for bidders to collude. Bidder intimidation, where colluding bidders intimidate other bidders into not bidding on certain items is also rendered impossible in an online auction environment due to the global audience that can attend these events. Put another way, issues regarding auction integrity are non-existent in a legitimate online auction.

Issues regarding product quality and ownership are issues that are not unique to the auction environment, and there are myriad legal remedies already in existence to provide consumers with recourse in the event of issues surrounding product quality and title. Moreover, these issues are generally not within the control of the auctioneer in the first place.

Regardless, online vehicle auctions that are conducted by an entity that holds an occupational license from TDLR should not be required to involve a licensed auctioneer. In the event a holder of an existing dealer or auto auction license issued by TDLR engages in any unethical or illegal acts selling or assisting in the sale of a vehicle in an online auction environment, that licensee would be subject to investigation and discipline, including suspension or revocation of its license by TDLR. Thus, additional licensing requirements would be redundant and confer no additional benefits to the public.

Online auctions already operate under an extensive and far-reaching federal and state regulatory environment, particularly with respect to laws protecting consumers.³ For example, the Federal Trade Commission and state Attorneys General have engaged in law enforcement crackdowns targeting Internet auction scams.⁴ A Texas license would simply be an unnecessary layer of regulatory costs and burden for online auctions.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

No. For the reasons stated in response to Question 1, Texas should not regulate its citizens with respect to online auctions. Further, Copart is not aware of any evidence that an additional licensing requirement for a Texas based online auction and sale would impose additional consumer protection. Moreover, the combination of federal and Texas laws governing fraud and deceptive trade practices are more than adequate to cover online auction activities that may harm consumers.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

No. For the reasons stated in response to Question 1, Texas should not require a person to obtain an auctioneer license to conduct an auction of the person's own property. Furthermore, requiring a person to pay a licensing



fee to sell their own property is unduly burdensome and will result in potential sellers abandoning the online auction process. Texas should not impose regulations that will impede the flow of e-commerce.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

As implied in earlier responses, we believe the answer for online auction companies should be “none” of the employees.

5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Copart respectfully declines to answer this question.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Copart recommends exempting online vehicle auctions from an auctioneer licensing requirement due to the unique nature of online vehicle auctions and the federal and state regulatory regime that applies to them. Alternatively, if Texas decides to impose an auctioneer license requirement, then the Texas Auction Law should allow for 50-state reciprocity. In other words, if an online vehicle auction has an auctioneer’s license in any other state, then that license would be valid for compliance with Texas auctioneer laws.

Thank you for the opportunity to provide comments on this important issue. Please contact me for additional comments or questions.

Respectfully submitted,

James R. Hines

Director of Government and Regulatory Affairs

Copart, Inc.

14185 Dallas Parkway, Suite 400

Dallas, TX 75254

(972) 391-5390 Office

4816-4320-4380, v. 1

¹ See <http://texasauctionacademy.com/the-course/catalog/>

² Copart complies with federal regulations promulgated by the Dept. of Transportation, National Highway Traffic Safety Administration, Dept. of Justice, Federal Trade Commission, E.P.A., U.S. Customs and Border Protection and Texas regulations promulgated by the TX Dept. of Motor Vehicles, TX Dept. of Transportation, TX Dept. of Public Safety and TX Commission on Environmental Quality.

³ Federal Trade Commission. (April 30, 2003). *Internet Auction Fraud Targeted by Law Enforcers* [Press Release]. <http://www.ftc.gov/news-events/press-releases/2003/04/internet-auction-fraud-targeted-law-enforcers>

Leslie L. Kacer

From: [REDACTED] on behalf of Doak Lambert [REDACTED]
Sent: Monday, June 30, 2014 4:16 PM
To: HB3038 Interim Charge
Subject: House Bill 3038

Following are my comments regarding HB3038 and how it should, in my opinion, affect Texas Auctioneers:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Only the entity collecting the money from items consigned should have to be licensed, and then, only if that entity is headquartered and operates out of the State of Texas. If eBay offers a consignor's items in an online auction, and if eBay then collects the money, takes out their commission, disperses the balance to the seller and is headquartered and operating out of the state of Texas, then yes, they should have to have a Texas license.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

No. If a live auction were being conducted in Louisiana where a Texas consignor had an item in the auction that was too large to transport to the auction, a Texas buyer ends up coming to the auction and buys the said item, then the auctioneer does not have to have a Texas license in order to legally make this transaction. Shouldn't be any different with an online auction.

In the purebred livestock business, it is common to sell at auction, semen or embryos that are stored in liquid nitrogen tanks at various stud stations around the country. If a breeder in Oklahoma stores his embryos at a stud service in Texas, decides to sell some of those embryos online through an online auction company located in Kansas, a Texas buyer ends up buying the embryos, then it seems ridiculous to me to require the online company in Kansas to have a Texas auctioneer license. In my opinion, that is not practical, nor is it easily enforceable.

3. Should a Texas Auctioneer license be required for a person to conduct an auction of the person's own property? Why?

No. Whose money is the seller going to abscond with? His own? If the seller misrepresents the items to the buyer, then the buyer has recourse through consumer protection laws that are already on the books.

4. Which employees at an auction company should be required to hold a Texas Auctioneer license? Why?

Only the owner of the auction company and the auctioneers he employs to conduct the auction. The auction owner should not be required to get his outside sales reps auctioneer licenses, when those reps have no desire or intent to be auctioneers.

5. How do you define "a sale or auction conducted outside this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

My definition of a sale or auction conducted outside this state is where the auctioneer calling the bids is physically located outside of the state and/or the company conducting the online auction is physically located outside of the state.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

I would make provisions, maybe even to the point of exemptions, for contract auctioneers who are hired strictly for their bid calling skills and their expert knowledge and commentary on the items being sold. Collecting auction funds is not part of their service. I know several contract auctioneers who make their living behind the microphone, but have never collected the first dollar from the auction proceeds. Yet, these same auctioneers are required to maintain an escrow account which, in many cases, has had the same minimum balance required by the bank for several years and has had no deposits or withdrawals the entire time the account has been opened because they do not collect funds from the auction. These auctioneers come to the auction, do their job behind the microphone, collect their fee from the seller or auction company owner, and then go down the road to next one.

Respectfully Submitted,
Doak Lambert

Leslie L. Kacer

From: Lance Swigert [REDACTED]
Sent: Monday, June 30, 2014 5:14 PM
To: HB3038 Interim Charge
Subject: Input regarding HB3038

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

Yes if the items are located in the State of Texas. If the items are located in the State of Texas, then the sale is taking place in the State of Texas so the company or individual placing the items for sale is conducting business in the State of Texas and should be required to hold a Texas auctioneer's license just as any other individual conducting auctions in the State of Texas would be required to do. Additionally, items being sold and delivered in the State of Texas (or auctions in the State of Texas which require bidders to pick up their items) are subject to the Sales and Use Tax Laws of the State of Texas and must also hold a permit to collect and remit the sales tax on these items. I believe that if a company is collecting money for a seller they are taking a fiduciary responsibility, and thus should be required to have a license. There could be an exemption in place just as with live auctions that individuals are allowed to conduct their own auction once every twenty four months.

1. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?
Same as Answer #1. Where the potential buyer resides is of no value as it relates to who should hold an auctioneer's license.
2. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Chapter 1802, section 1802.002 (4) already addresses this issue. It does not require a license as long as they are not in the business of selling at auction and no more than once every 24 months

3. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?
I believe any employee that is deciding a commission rate, or deals with contract between the seller and the auction company should have a license. If a person is importing information or following a set of standards set by the auction company then they should have a license, as long as it does not deal with contracts
4. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?
A sale or auction outside of the State of Texas is when the items are located outside of the State of Texas.
5. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?
I believe that HB3038 was well thought out and written. The main issue with HB3038 is the implementation, rule making, and enforcement of the laws that are already in place. One issue I know of is if a governmental employee lists the items through an auction website, some companies believe that the company no longer requires an auctioneer license because of the exemption in the law. I believe this interpretation is inaccurate because if the auction was to be held as a live auction the auctioneer

would be required to have a license. The rules and laws should not be different based on whether the auction is live or online.

Lance Swigert



979-219-4902

<http://www.swicoauctions.com>

Leslie L. Kacer

From: Forres Meadows [REDACTED]
Sent: Monday, June 30, 2014 8:04 AM
To: HB3038 Interim Charge
Subject: Input regarding House Bill 3038
Attachments: PastedGraphic-1.tiff

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

YES, if the person posting/listing the items is in the business of selling. Also if they are handling funds for a consignor/seller.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

YES, just like the comptroller laws/rules/regulations state, if an item is in Texas, that is what tax is charged/collected. So that part is already established.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Maybe, If it is a one time sale of their own personal property and not inventory of a business, like a garage sale, then no. But if it is done on a reoccurring basis or inventory of a business/estate and as a business, then YES.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

The auctioneer of the company and the person that signs contracts. Reason, the person signing the contract should also be required to know/understand the laws of Texas/US to know what is legal to sell and the legal method of selling just like the auctioneer is required to.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

I would use the same reasons the Comptroller uses. Where is the property being offered for sale located? If its in Texas, then Texas Law would apply.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

I would like to see the law include benefit auctions/auctioneers. The exemption for a benefit auctioneer needs to be re-defined. Also, the definition of “receiving compensation needs to be “any type of compensation”, to include tickets to event, dinner, drinks, etc. For those in my opinion are considered “compensation”. There are many items being sold at benefit auctions by unlicensed auctioneers, therefore placing liability on the non-profit and the consumer. A licensed auctioneer will know what is legal to sell because he is required by the state to have continuing education.

Thank you for the opportunity to offer our professional opinion.

Forres

Forres Meadows, CAI, ATS, BAS, PRI (Tx.#9230)
Director
Forres Meadows Auctioneers, Inc. dba TexasBid.com
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www.TexasBid.com
Professional Auctioneers serving Texas since 1989
2013 Texas Auctioneers Hall of Fame Inductee
2013 Reserve Grand Champion Texas Auctioneer
CAI – Certified Auctioneers Institute
ATS - Auction Technology Specialist
BAS - Benefit Auctioneer Specialist
PRI - Professional Ringmens Institute

Leslie L. Kacer

From: Norman N. Seaton [REDACTED]
Sent: Monday, June 30, 2014 9:30 AM
To: HB3038 Interim Charge
Subject: Auction business
Attachments: Auction HB 3038 reaction.docx

See attachment

- ***Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy?***

Opinion: This question is not clear; it blends consigners and bidders.

Answer: No! *“This question relates to “consumer auction services” versus “auctioneer conducting auctions.”*

Why? The majority of these names are global auction services that may or may not be based in the State of Texas and do not require the services of a live bid-caller. These types of auctions are very impractical to control or even monitor. The answer would be “yes” if either the auctioneer and/or merchandise is within a clearly defined Texas location and includes (for example, consignment auctions). Auction laws need to include a disclaimer related to consumer auction services such as e-Bay auctions.

- ***Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?***

Opinion: This is a badly stated question. The disqualifying phrase "*and the potential buyer is a resident of Texas*" should be removed to make it a good question. Regardless of the selling process, goods and/or services being sold in Texas should be governed with Texas laws that includes consumer protection laws.

Answer: If bid calling and/or items are being sold by auction are in the State of Texas, Texas laws and rules should require the bid-calling auctioneer to be licensed and that sales tax should be collected unless the buyer is exempted by the State of Texas.

Why? Because physical auctions involving bid calling should be licensed by the State. Auction laws and rules should assure that pre-bid, online and physical auctions happening simultaneously follow the same laws and rules.

- ***Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?***

Answer: If the question is related to an owner actually **bid-calling** at an advertised auction of personally owned goods, then the answer is "Yes."

Why? Because all bid-called auctions being held in the State of Texas need to follow the same rules. In the event that two or more individuals are attending a non-advertised selling event (i.e., a garage sale) and negotiating and/or competing for a price, then the selling event should not be considered a public auction. I recommend that statements related to "owners auctioning personal items" be removed from Texas auction laws and rules.

- ***Which employees at an auction company should be required to hold a Texas auctioneer license?***

Answer: The "bid calling" auctioneer.

Why? To assure consistency with the laws and rules.

Opinion: Texas laws and rules related to "auction houses" is inadequate. Instead of the "auction house owner" being required to have an auctioneer license, the "auction house owner" should be required to legally operate a business in the individual location within the State of Texas and be required to maintain the same responsibilities (taxes, paying consigners, etc.) that are now being the responsibility of the licensed auctioneer. Such auction house owners must be licensed auctioneers, or hire a licensed auctioneer, before live bid-calling can be conducted at a public auction.

- ***How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?***

Answer: An auction being conducted in which the merchandise and auctioneer are not within the physical boundaries of Texas. These auctions must follow other laws and rulings.

- ***If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?***

Summary Reaction to this and the other questions within this public opinion survey:

Opinion: Auctions should be separated into areas when discussing Texas Auction Laws:

- Free-lance and independent consignment auctioneers (current auction rules apply)

- Recurring Texas-based consignment auctions (auction houses) – the owner must be held responsible for assuring that the consumers and/or consigners are not subject to fraudulent activities. This responsibility should not be transferred to the hired bid-calling auctioneers. Such businesses should assure that all live bid-calling activities are conducted by auctioneer licensed by the State of Texas. To enforce legal action against a hired bid-calling auctioneer because of the fraudulent activities of the business owner does not benefit the general public that includes conscientious licensed auctioneers.
- Organization-owned auction services that do not involve consigners and/or live bid-calling practices. These organizations should be controlled by local laws.
- Global consumer-based auction services (e-bay, etc.) should remain exempt from Texas Auction laws.

All auctions, including those using bid-callers, being conducted in the State of Texas should be required to post the laws under which the organization is operating, including consumer complaint contact information.

The auction laws should be modified to clearly state that the auctioneer is to equally represent both the buyer and seller. This clarification will bring closure to the long-term on-going discussions related to minimum bids, reserves, false bids and other such topics. The main concern with such terms is the fact that generic definitions are interpreted differently by individuals and agencies conducting various types of auctions (cattle, auto, personal and real estate auctions, etc.). Auctions are a time-honored method of conducting business and should be governed accordingly. In other words, controversial terms should be eliminated from the auction

laws so that all general public auctions conducted within the State of Texas are conducted with a consistent set of laws and rules.

Side note: While studying this HB, I came in contact with a local organization that wants to “auction” the company’s manufactured product (jewelry) on a privately owned web site instead of continuing to use e-Bay auctions. The leaders of this organization were not impressed with the fact that they may need to attend an auction school to study consignment contracts, bookkeeping, and other such topics. Right now they are successfully using e-bay services; however, such services do not sufficiently serve their needs. In my opinion, this type of Texas-based auction activity does need to meet the requirements necessary to become licensed auctioneers unless live bid-calling is involved. I’ve encouraged the individuals within this organization to send a reaction to TDLR concerning this HB.

Leslie L. Kacer

From: Whitney, Devin [REDACTED]
Sent: Monday, June 30, 2014 10:40 PM
To: HB3038 Interim Charge
Subject: eBay Inc.'s Feedback for TDLR's Auctioneers Program Questions
Attachments: TDLR Request for Feedback - eBay Inc Response - June 30 2014.docx; Exhibit D - Wisconsin Auctioneer Opinion.pdf; Exhibit C - North Dakota AG Opinion.pdf; Exhibit B - FTC Staff Comment, May 26 2006.pdf; Exhibit A - Ewert v eBay Inc.rtf

To Whom It May Concern:

Thank you for the opportunity to provide comment on the further implementation and impacts of HB 3038 (83R). Attached you will find eBay Inc.'s comments on the questions posed by the Department, as well as supporting documents labeled Exhibit A-D.

Thank you again for affording us this opportunity and please let me know if you have any questions regarding our responses or our supporting documents.

Regards,

Devin

Devin Whitney
Manager, State Government Relations

eBay Inc.
P: 408 376 7858 | M: 707 319 3753



June 30, 2014

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

1.1 No. eBay Inc. respectfully believes that an auctioneer's license should not be required for many reasons, including but not limited to the following:

- (a) **eBay is not an auctioneer, as defined in section 1802.001(5) of the Texas Auction Law.** eBay is not a person or individual and therefore cannot be an auctioneer under Sections 1802.001, *et seq.* eBay is an online marketplace, which facilitates transactions between buyers and sellers. While some of its sellers choose to sell on the site through auction-style listings, eBay does not sell or offer to sell at auction the items listed on its site, nor does it solicit, negotiate or execute auction listing contracts. Indeed, the auction-style listings found on eBay are not really auctions at all in the legal or traditional sense. Those who have considered the issue, including courts and Regulatory agencies in other jurisdictions agree that eBay is not an auctioneer and does not conduct auctions on its website. *See, e.g. Ewert v. eBay*, 2008 WL 906162 (N.D. Cal. 2008), attached at Exhibit A ("Plaintiff's attempt to place eBay's conduct within the scope of the Auction Act is like trying to put a round peg in a square hole."); *see also* FTC Staff Comment to the Honorable Noble E. Ellington Re Louisiana S.B. 642 (May 26, 2006), attached as Exhibit B; Letter Opinion 2005-L-40 of North Dakota Attorney General Wayne Stenehjem, attached as Exhibit C; and Wisconsin Dept. of Regulation and Licensing Opinion, attached as Exhibit D.

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(b) **In addition, it would not further the public policy underlying the Texas Auction Law to require eBay to hold an auctioneer's license.**

(i) **The educational purpose of the auctioneer's license is not furthered by requiring eBay to have a license.** The Texas Auction Law makes clear that one purpose of an auctioneer's license is consumer protection, in the form of verifying that auctioneers have sufficient knowledge of the relevant laws governing auctions and the auction business (section 1802.052(3) and (6) and section 1802.056(a), Texas Auction Law). As auction-style listings on eBay are not auctions in the traditional or legal sense, such educational requirements do not apply. As an example, auctioneers typically have a duty to accept competitive bids, including obtaining the best bid for an item. The eBay system for auction-style listings is designed to provide a consistent and equitable bidding system, in which all bids are treated equally and bids are accepted right up until the end of the item listing.

(ii) **The public policy of consumer protection is not furthered by requiring eBay to hold a license because eBay already provides significant protection for its consumers.** To the extent that one purpose of the Texas auctioneer's license is to ensure that consumers have the opportunity to make claims and seek payments from a recovery fund (subchapter E, Texas Auction Law), eBay already has policies to protect buyers that transact on its website. For example, eBay Money Back Guarantee protects buyers who did not receive the item bargained for. eBay also monitors for and has policies that prohibit shill bidding. These

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policies are just some of the ways eBay provides protection for buyers on our site.

1.2 Further, eBay sellers should not be required to hold a license, as they are not auctioneers and such a requirement would not further the public policy underlying the Texas Auction Law.

(a) **Such sellers are not auctioneers.** They may choose to sell their items through auction-style listings, but those auction-style listings are not auctions. *See Ewert v. eBay, Inc.*, 2008 WL 906162, at *1-2 (Court holds that eBay is not an auctioneer, does not conduct auctions and is not an Auction Company.)

(b) **It would not further the public policy underlying the Texas Auction Law to require eBay sellers to hold an auctioneer's license.**

(i) **The educational purpose of the auctioneer's license is not furthered by requiring sellers on eBay to hold a license.** As set out above, auction-style listings on eBay are not auctions. The eBay system for auction-style listings is designed to provide a consistent and equitable bidding system, in which all bids are treated equally and bids are accepted right up until the end of the item listing. Furthermore, sellers may only sell on the site if they have accepted our User Agreement, which provides, amongst other terms, that they must comply with our rules for listing and Selling Practices Policies. These policies include a requirement to comply with applicable laws and rules specifically designed for auction-style listings.

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(ii) **The public policy of consumer protection is not furthered by requiring sellers on eBay to hold a license.** As set out in paragraph 1.1(b)(ii) above, eBay has robust consumer protection policies and systems in place, designed to provide consumers purchasing from these sellers with recourse.

2. *Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?*

2.1 No. Because eBay is not an auctioneer, it is an online marketplace that facilitates sales between buyers and sellers. *See Ewert*, above. For the reasons set out in our response to question 1 above, we do not believe that an auctioneer's license should be required for sales on the eBay website, including those where the property is located in Texas and the potential buyer is a resident of Texas. eBay is facilitating buying and selling between consumers by providing an online platform. Currently, there are many Texas residents who buy and sell items on eBay. eBay sellers span a broad range, from an individual who sells a painting they no longer want in their home to a small business owner who buys and sells inventory on eBay. If this license were applicable to eBay or its sellers in Texas, it would frustrate Texas consumers' ability to sell on eBay, harming consumer choice and placing Texas consumers at a competitive disadvantage with respect to sellers in other states. This is inapposite to the goal of the statute, which is to provide consumer protection and oversight to live auctions in Texas to protect consumers. eBay has robust consumer protection policies already in place that protect people who buy and sell items on eBay in Texas and elsewhere.

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3. *Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?*

3.1 No. For the reasons set out in paragraph 1.2 above, a person conducting an online (not in-person) sale by an auction-style listing of their own property on the eBay marketplace website should not be required to hold a Texas auctioneer's license. And, as stated previously, the sale of property through auction-style listings on eBay is not conducted via auction at all. *See* 1.1 above.

4. *Which employees at an auction company should be required to hold a Texas auctioneer license? Why?*

4.1 In our view, only those employees at an auction company (as defined in section 1802.001(4) of the Texas Auction Law) meeting the definition of auctioneer set out in section 1802.001(5) should be required to hold an auctioneer's license. The public policy of ensuring consumer protection through both education about Texas auction laws and the provision of adequate recourse in the event of a claim would not be served by requiring other employees of an auction company to obtain such a license.

5. *How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?*

5.1 "A sale or auction conducted outside of this state" should be interpreted to mean:

- (a) an auction or sale where either the auctioneer or bidder is located outside of the state of Texas; or

June 30, 2014

(b) an auction or sale conducted over an online platform facilitating interactions between sellers and buyers to the extent that the platform is merely serving a marketplace to connect buyers and sellers over the internet.

5.2 We support the interpretation above as being consistent with the underlying purpose of the Texas Auction Law, namely to ensure consumer protection through education of auctioneers and providing adequate recourse for consumers with claims (as set out in our response to question 1 above).

6. *If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?*

6.1 In our view, the Texas Auction Law could be further clarified by adding a new section 1802.002(13), to read as follows:

[This chapter does not apply to [...]] “(13) a sale conducted on an internet website to the extent that such website merely facilitates interactions between buyers and sellers.”

6.2 We suggest this clarification as being consistent with the underlying purpose of the Texas Auction law, namely to ensure consumer protection through education of auctioneers and providing adequate recourse for consumers with claims (as set out in our response to question 1 above).

2008 WL 906162

Only the Westlaw citation is currently available.
United States District Court, N.D. California,
San Jose Division.

Michael EWERT, Plaintiff,

v.

eBAY, INC., Does 1 to 100, inclusive, Defendants.

No. C-07-02198 RMW. | March 31, 2008.

Attorneys and Law Firms

Charles Stewart Bishop, Patricia Ann Carlson, John R. Fabry, for Plaintiff.

Heather Coe Meservy, Lori Renee Ellis Ploeger, Michael Graham Rhodes, for Defendants.

Opinion

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

RONALD M. WHYTE, District Judge.

*1 Defendant eBay, Inc. ("eBay") moves to dismiss the first through third causes of action set forth in plaintiff Michael Ewert's first amended complaint ("FAC"). The court grants the motion.

Plaintiff Michael Ewert purchased "auction" services from eBay on January 6 and January 14, 2007. FAC ¶ 16. Ewert utilized eBay's "Online Auction Format," which utilizes a form that purports to allow an eBay user to select a fixed duration for the auction of 1, 3, 5, 7 or 10 days and to permit the user to have the auction begin when the form is submitted. *Id.* ¶¶ 2, 20. Ewert selected 5 days for both of his January 2007 auctions and specified that they were to begin when submitted. According to Ewert, neither auction began when submitted nor did either auction last for the 5 days specified. *Id.* ¶ 16. He claims that his experience is not unique among eBay users.

Ewert filed a proposed class action complaint on April 20, 2007 and subsequently filed his FAC on July 18, 2007. His FAC asserts that eBay's practices violate (1) the California Auction Act ("Auction Act"), Cal. Civ.Code § 1812.601 *et seq.*; (2) California's Unfair Competition

Law ("UCL"), Cal. Bus. & Prof.Code § 17200 *et seq.*; (3) the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ.Code § 1750 *et seq.*; and (4) Cal. Civ.Code §§ 1709, 1710 and 1572. Ewert's FAC also sets forth a claim for unjust enrichment and a common law claim for money had and received. eBay asserts by its current motion that the first through third claims alleging violations of the Auction Act fail to state a claim. eBay also objects to the use of the alleged violations as predicate acts for liability under the UCL.

eBay was previously sued in this district in an essentially identical suit, *Butler v. eBay Inc.*,¹ action no. 06-02704 JW. There, the court granted a motion to dismiss and held that the Auction Act does not apply to eBay's conduct as a matter of law. The *Butler* court's rationale was that eBay is neither an "auctioneer" nor an "auction company" as defined by the Auction Act. This court agrees.

Plaintiff's attempt to place eBay's conduct within the scope of the Auction Act is like trying to put a round peg in a square hole. The Auction Act was enacted before Internet "auctions" like eBay's and other similar business platforms were in vogue. A review of the Auction Act reveals a number of reasons why it does not apply here:

(1) the history of the Auction Act suggests it was designed to protect customers of auction houses from unscrupulous auctioneers absconding with goods entrusted to them and to protect bidders from misrepresentations of the value of goods being auctioned. Under the e-Bay business model, eBay never takes possession of goods being sold and never makes representations as to value;

(2) eBay is not an "auctioneer" as defined by the Act as it is not an "individual";

(3) eBay does not conduct "auctions" within the meaning of the Auction Act because the sale does not culminate by acceptance by the auctioneer of the highest offer but rather at the expiration of the fixed period designated by the seller²;

*2 (4) eBay does not conduct "auctions" within the meaning of the Auction Act because there is no auctioneer who makes a series of invitations for offers;

(5) eBay is not an "Auction Company" because it does not make "auction sales"; and

(6) provisions of the Auction Act negate any suggestion

that it applies to **eBay** because application of those provisions would be nonsensical (e.g., requirement of the posting of an 18 x 24 inch sign at the entrance to the **auction**).

Plaintiff pleads in the alternative that even assuming that **eBay** is not itself an **auctioneer** or an **auction** company pursuant to the definitions set forth in the **Auction** Act, it nevertheless aids and abets **eBay** customers in conducting **auctions** and is therefore liable under § 1812.608(b) of the **Auction** Act. This section provides that it is a violation of the Auction Act “for any person to ... (b) Aid or abet the activity of any other person that violates any provision of this title. A violation of this subdivision is a misdemeanor subject to a fine of one thousand dollars (\$1,000).”

To violate the **Auction** Act, an **eBay** customer would have to be engaging in or involved with an **auction** as defined by the Act. The complaint alleges that **eBay** serves as the platform through which **auctions** are conducted. As alleged, an eBay customer does not accept

the final offer to purchase, rather the eBay system stops the bidding at the time designated by the eBay customer (or stops the bidding before the designated time as alleged by the plaintiff). FAC ¶ 16. As set forth in § 1812.601(b), an **auction** “must culminate in the acceptance by the **auctioneer** of the highest or most favorable offer made by a member of the participating audience,” thus because **eBay’s** system effectively stops the exchanges and the court has determined that **eBay** is not an **auctioneer**, an **eBay** customer’s use of the **eBay** site to list goods for sale is not an **auction** under the **Auction** Act.

III. ORDER

For the foregoing reasons, the court grants eBay’s motion to dismiss plaintiff’s first through third claims with prejudice.

Footnotes

- As an initial matter, plaintiff contends that it is inappropriate for the court to grant eBay’s request that the court take judicial notice of documents in the *Butler* matter. eBay asked the court to take judicial notice of the complaint, the 12/12/06 Order and the parties’ stipulation of dismissal and order thereon. RJN at 3; Decl. Heather Meservy Supp. RJN, Exs. K-L. As the court only considers *Butler* to the extent that the reasoning of the opinion is persuasive, there is no need to request judicial notice of this opinion. Although the dismissal in *Butler* states that the order holding that “**eBay** is not bound, encompassed, or otherwise governed by the California **Auction** Act” is “binding legal precedent,” this court does not consider it as such and expressly rejects any notion that it is. Nevertheless, this court agrees with *Butler’s* analysis that the **Auction** Act is not applicable to **eBay’s** “**auction**” activity.
- The court acknowledges that the highest bid within the time of the auction is accepted. However, what is determined to be the highest bid is based upon expiration of a time limit, not on the cessation of bids from potential buyers.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Washington, DC 20580



Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics

May 26, 2006

The Honorable Noble E. Ellington
Louisiana State Senate
P.O Box 94183
Baton Rouge, LA 70804

Dear Senator Ellington:

The staffs of the Federal Trade Commission's ("FTC" or "Commission") Office of Policy Planning, Bureau of Consumer Protection, Bureau of Economics, and Bureau of Competition¹ are pleased to respond to your request for comments on Louisiana Senate Bill 642 ("SB 642" or the "Bill"), which would "define more clearly the exact nature of the type of seller who must become licensed as an auctioneer." The FTC has considerable experience in analyzing both consumer protection and competition issues related to Internet auctions and online commerce.² Based on our experience, we believe that, if enacted, SB 642 will enhance consumer welfare by reducing barriers to entry in the provision of online auction and retail services and thereby expanding consumer

¹ This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

² The FTC is the leading U.S. consumer protection agency and works with auction websites such as eBay and the states to combat fraud and related problems in Internet auctions. It provides help to buyers and sellers to navigate potential pitfalls of using the Internet and Internet auction sites. See ONGUARD ONLINE, <http://onguardonline.gov/auctions.html> and INTERNET AUCTIONS: A GUIDE FOR BUYERS AND SELLERS, <http://www.ftc.gov/bcp/conline/pubs/online/auctions.pdf>. Note that there are a number of Internet auction houses, including Yahoo!, Amazon and Ubid. The FTC's Bureau of Economics recently hosted a roundtable on the economics of Internet auctions. See Internet Auction roundtable Web site at <http://www.ftc.gov/be/workshops/internetauction/internetauction.htm>. The FTC also hosted a conference on the anti-competitive barriers to e-commerce. See E-commerce Workshop Web site at <http://www.ftc.gov/opp/ecommerce/anticompetitive/index.htm>.

choice. We also believe the Bill will not increase the risk of consumer harm from auction fraud.

The Proposed Legislation

Current Louisiana law defines an auction as “[the sale by] competitive bid on any property.”³ Based on its interpretation of this definition, the Louisiana Auctioneer’s Licensing Board (“LALB”) recently began to require online auction house Trading Assistants (“TAs”) to have either an auction business license or an auctioneer’s license to operate. A consumer delivers his or her merchandise to a TA, who then sells it through an online auction house in return for some compensation, typically a percentage of the final sales price, although compensation schemes vary. TAs include individuals helping with a few transactions a year, large businesses with bricks and mortar locations, and online auction drop-off stores.⁴ It is our understanding that the LALB would require TAs to pay an annual license fee of \$300, buy a \$10,000 surety bond, and, if required, to obtain an auctioneer’s license, receive the necessary education, training, and continuing education.⁵

The Bill would change the definition of auction by adding qualifying language to the existing statutory definition:

“Auction” means the sale by competitive bid on 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.⁶

It is our understanding that this proposed change would exempt from LALB’s licensing requirements businesses and individuals that offer property through online auction houses exclusively.⁷

³ 37 LA. REV. STAT. ANN. § 3103 (A) (3). “Auctioneer” means any person who, for another, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at an auction. *Id.* at § 3103 (A) (4).

⁴ See John Hill, *Louisiana, eBay Bidding War of Words*, SHREVEPORT TIMES, Apr. 11, 2006, at <http://shreveporttimes.com/apps/pbcs.dll/article?AID=/20060411/NEWS01/604120313/-1/LEGISLATUR>.

⁵ To be licensed as an auctioneer in Louisiana, the person must have completed “[a] series of studies at a school of auctioneering licensed or approved by the board” or “[a]n apprenticeship of one year working with and under an auctioneer duly licensed in the state of Louisiana.” 37 La.sec. 3113 (A) (4) (a-b). The approved schools are listed at <http://www.lalb.org/schools.htm>.

⁶ SB 642 § 1.

⁷ For example, sales via online auctions would be excluded from this definition because there is no auctioneer who makes “a series of invitations for offers.” This definition is similar to the definition used in Tennessee (62 Tenn. § 19-101 (2)). The Tennessee Attorney General recently wrote that the Tennessee Auctioneer Commission does not have authority over Internet auction drop-off stores. Further, one interpretation of the detailed opinion is that the Tennessee law does not cover Internet auction house

Competitive Effects of Proposed Legislation

By clarifying who needs to be licensed as an auctioneer or auction business, SB 642 will exempt from licensing requirements businesses and individuals who facilitate the use of online auction houses. This change will remove a barrier to entry (recently erected by the LALB), increasing consumer choice and likely leading to lower prices for TA services and concomitantly greater availability of goods from Louisiana for buyers in Louisiana and elsewhere.

The current requirement that TAs obtain an auction business or auctioneer's license is likely to increase the price that TAs in Louisiana charge for their service. First, it is likely that TAs will pass on a portion of the increased costs that they must incur as a result of licensing requirements to consumers in the form of higher prices. Further, if the total licensing costs are significant, some TAs and others may stop providing online auction and retail services altogether. If the current LALB policy reduces the number of TAs, the price of those services is likely to rise, making both potential sellers and potential buyers worse off. The presence of fewer competitors may reduce competition on price and quality among TAs and increase market power for market participants.⁸

TAs provide a valuable service to those who want access to online markets, but prefer not to sell goods themselves through online auction houses.⁹ Further, given their relative experience using online auction houses, TAs are likely to be able to sell goods more effectively than their clients, by, for example, choosing the best mode to sell a particular item.¹⁰ Standard economic theory also suggests that businesses such as TAs

Trading Assistants. See Tennessee Attorney General Opinion No. 06-053 (March 27, 2006), at <http://www.attorneygeneral.state.tn.us/op/2006/OP/OP53.pdf>.

⁸ Standard economic reasoning suggests that free entry will allow the market price to fall to where the market demand is covered by the most efficient suppliers (see ROBERT PINDYCK & DANIEL RUBINFELD, MICROECONOMICS ch. 8 (5th ed. 2001)). A number of standard economic theories suggest that a small number of competitors or reduced geographic or differentiated product competition will lead to higher prices. See *id.* at ch. 12.

⁹ A number of studies have found that high feedback scores are associated with higher revenue for sellers. On eBay, feedback can be given after each transaction. The feedback includes a positive, negative, or neutral rating and written comments. eBay tracks and publishes the aggregate feedback score where a positive is equal to 1, a negative to -1 and a neutral is 0. To the extent that sellers can choose TAs with higher feedback scores this may lead to higher returns than these sellers could have received selling directly on eBay. See, e.g., Paul Resnick *et al.*, *The Value of Reputation on eBay: A Controlled Experiment*, at <http://www.si.umich.edu/~presnick/papers/postcards/>. According to eBay, "To be included in the Trading Assistant Directory and have access to Trading Assistant marketing materials, you must have (1) sold at least 10 items in the last 90 days, (2) a feedback score of 100 or higher, (3) 97% positive feedback or higher, and (4) your eBay account must be in good standing." For further information see eBay, *Trading Assistant Program*, <http://pages.ebay.com/tahub/index.html>.

¹⁰ eBay and other Internet auctions provide numerous methods and mechanisms for selling items. For example, on eBay, not only is there the standard auction format, but there are also fixed price options (also known as "Buy-It-Now"), Best-Offer options, eBay Stores and eBay Express, plus combinations of

that specialize in selling items on online auction houses will be able to achieve lower costs relative to infrequent sellers through the purchase of capital equipment and access to larger buying volumes.¹¹

If TA services are more expensive, fewer goods and services will end up for sale in online auction houses. Online auction houses provide a national, or even international, market for products that may have only traded locally prior to the Internet.¹² By allowing bidders throughout the United States to bid on goods offered for sale in Louisiana, online auction houses may lead to large gains from trade to consumers in Louisiana and elsewhere.¹³ Online auction houses allow items to be traded to the people who want the goods the most, irrespective of where those people live.¹⁴ By decreasing Louisiana residents' use of online auctions houses, the LALB's policy is likely detrimental to sellers in Louisiana and, by reducing the supply of goods from Louisiana available through online auction houses, to buyers in Louisiana and elsewhere.

Further, to the extent that TAs place competitive pressure on established auctioneers, the current LALB policy may increase the price that some consumers pay for traditional auctioneers' services. In particular, this may occur if traditional auctioneers

the above. Internet auction sellers also have options on the length of the auction, the minimum bid amount, whether to use a hidden reserve, and the amount of the hidden reserve. See Robert Zeithammer, *When is Auctioning Preferred to Posting a Fixed Selling Price*, at http://gsbwww.uchicago.edu/fac/robert.zeithammer/research/auctioned_goods_sept_05.pdf.

¹¹ For example, TAs are likely to own shipping equipment and purchase relatively large levels of shipping services.

¹² See, e.g., Christopher Adams *et al.*, *Vettes and Lemons on eBay* (finding that the average bidder is willing to travel 700 to 800 miles to purchase a used car), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=880780.

¹³ For example, eBay, the leading online auction house, has 72 million active users, including one million TAs, participating in auctions valued at \$22 billion in 2005. See *eBay Unaudited Supplemental Operating Data* at http://investor.ebay.com/downloads/fund_Metrics.pdf. Further, it was recently estimated that eBay contributed \$6.5 billion annually to consumer welfare. Ravi Bapna *et al.*, *Consumer Surplus in Online Auctions*, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=840264. See also Bapna presentation at the Internet Auction Roundtable at <http://www.ftc.gov/be/workshops/internetauction/ravibapnaslides.pdf>. In Louisiana, eBay has 460 TAs and approximately 1,500 people making a full or part-time living from eBay.

¹⁴ eBay's standard auction format allows bidders to bid "as if" they are attending a live auction without the need to actually attend and without having to bid as the auction progresses. This format gives sellers access to bidders in all parts of the country and in all time zones. eBay uses a "proxy bidding" system where the bidder enters the highest amount he or she is willing to pay and the system sets the price at the second highest proxy bid. William Vickrey won the Nobel Prize in Economics in part for the realization that bidders will behave in a similar manner in an eBay-style auction as they will in a standard live auction. The equivalence between sealed-bid second price auctions and "English" auctions has been independently discovered on a number of occasions. See David Lucking-Reiley, *Vickrey Auctions in Practice: From Nineteenth-Century Philately to Twenty-First-Century E-Commerce*, 14 J. ECON. PERSPECTIVES 183 (2000).

compete with TAs by offering online auction and retail services. Auctioneers or auction businesses that have already satisfied the licensing, insurance and education requirements can provide online auction and retail services without concern about competition from unlicensed TAs.

Consumer Protection Issues Related to Online Auction Houses

FTC staff works with online auction houses and the states to reduce fraud associated with Internet auctions and to educate consumers on the risks associated with using Internet auctions.¹⁵ The FTC also hosts the Consumer Sentinel database, which collects information on consumer complaints. Consumer Sentinel data show that fraud in Internet auctions is one of the largest sources of consumer complaints received by the FTC.¹⁶

We are not aware of any particular consumer protection problem with TAs in Louisiana, and it is unlikely that requiring TAs to become licensed auctioneers or licensed auction businesses will address the most serious fraud-driven consumer complaints associated with Internet auctions – that sellers fail to send the merchandise.¹⁷

¹⁵ The FTC has issued extensive education for both Internet auction sellers and buyers. Some of the tips the FTC offers buyers on how to avoid falling prey to Internet auction fraud include: (1) becoming familiar with the auction site and its protections for buyers; (2) before bidding, researching the seller and avoiding doing business with sellers who try to lure a buyer off the auction site with promises of a better deal; (3) being cautious about escrow or online payment services that are unknown or have no functioning contact information; (4) protecting privacy by not providing personal or financial information until ensuring the legitimacy of a seller or payment service; (5) saving all transaction information; and (6) contacting the FTC or state attorney general's office if problems cannot be resolved.

¹⁶ However, Consumer Sentinel complaints are self-reported, and the volume of these complaints do not correlate to the actual frequency of consumer problems. In 2005 there were approximately 80,450 complaints received by the FTC regarding Internet auctions (<http://www.ftc.gov/opa/2006/01/topten.htm>). In comparison, there were approximately 1.9 billion items listed on eBay alone (see http://investor.ebay.com/downloads/fund_Metrics.pdf). That is, there was an average of one complaint for every 23,000 items listed. For a discussion of this issue presented at the Internet Auction Roundtable see Keith Anderson, *Internet Auction Fraud: What can we learn from Consumer Sentinel data?*, at <http://www.ftc.gov/be/workshops/internetauction/keithandersonslides.pdf>. For more recent estimates of the frequency of problems on eBay see Chris Dellarocas & Chris Wood, *The Sound of Silence in Online Feedback: Estimating Trading Risks in the Presence of Reporting Bias*, at <http://clients.pixelloom.info/WISE2005/papers/161.pdf>.

¹⁷ For a discussion of complaints from the FTC's Consumer Sentinel database see OnGuard Online Web site at <http://onguardonline.gov/auctions.html#fraud>. Other complaints about Internet auctions include: sellers who send something of lesser value than advertised; sellers who fail to deliver in a timely manner; sellers who fail to disclose all relevant information about a product or terms of the sale; bid siphoning; second chance offers, shill bidding and bid shielding. For 2005, Louisiana ranked 48 among the 50 states with approximately 80 total fraud complaints in the Consumer Sentinel per 100,000 people in the population. In 2005, Louisiana had 750 fraud complaints associated with Internet auctions in the Consumer Sentinel. This represents about 20% of all Louisiana fraud complaints in the database, which is slightly lower than the national average of about 25% (see Anderson presentation). The Consumer Sentinel collects consumer complaints from numerous sources and on numerous topics. For more information see Consumer Sentinel Web site at <http://www.consumer.gov/sentinel/>. The Louisiana Auctioneers Association (letter dated May 9, 2006) states that the \$10,000 surety bond could be used to pay restitution

Recently, problems involving non-shipment of merchandise have occurred with fraudsters from overseas stealing legitimate eBay accounts and eBay user IDs.¹⁸

To the extent that TAs have high feedback ratings, removing them from the market may actually make consumers worse off.¹⁹ Recent academic studies suggest eBay sellers with high feedback scores are more likely to provide accurate information and are less likely to commit fraud.²⁰ Moreover, to the extent that TAs rely heavily on having a good feedback score for continued business, TAs are less likely to provide poor information or commit fraud. Further, to the extent that TAs have physical locations and brand names, they would have even less incentive to harm or mislead consumers.²¹ If licensing were voluntary for TAs, they may have an incentive to become licensed auctioneers or licensed auction businesses to signal their trustworthiness to potential sellers and buyers. Voluntary memberships in the Better Business Bureau or voluntary licensing as an auctioneer or an auction business are two ways for TAs to establish trust with potential clients and customers.²²

Conclusion

Consumers in Louisiana benefit from the use and availability of TAs. The LALB's requirement that TAs become licensed auctioneers or licensed auction businesses is likely to harm consumers by reducing choice and increasing prices. Although there may be legitimate consumer protection concerns associated with auction fraud, the LALB's action does not seem to be tailored to such concerns. Based on our review, FTC staff believes that if enacted, SB 642 is likely to enhance consumer welfare in Louisiana.

We appreciate the opportunity to present our views. Please do not hesitate to contact us about this issue.

to a consumer (presumably a consumer who is a buyer) for a fraudulent sale. While a surety bond could protect those buyers, there are other protection mechanisms available to buyers in the online auction marketplace.

¹⁸ See, e.g., Benjamin Sutherland, *Swimming With Sharks*, NEWSWEEK INT'L (March 27, 2006), at <http://www.msnbc.msn.com/id/11900480/site/newsweek/>.

¹⁹ See note 9, *supra*, for an explanation of feedback ratings.

²⁰ See, e.g., Ginger Jin, *Price, Quality and Reputation on eBay*, Presented at FTC Internet Auction Roundtable (Oct. 27, 2005), at <http://www.ftc.gov/be/workshops/internetauction/gingerjinslides.pdf>.

²¹ When there are information problems in a market, reputations and brand names may play an important role in building trust with customers. See, e.g., James Lacko, *PRODUCT QUALITY & INFORMATION IN THE USED CAR MARKET*, FTC Bureau of Economics Staff Report (Jun. 1986).

²² Standard economic reasoning, dating back to work by Nobel Laureate Michael Spence, suggests that if there are higher costs to hucksters becoming licensed auctioneers relative to honest service providers, then voluntarily becoming a licensed auctioneer sends a signal of quality to potential sellers and buyers. See Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355 (1973).

Respectfully Submitted,



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**LETTER OPINION
2005-L-40**

November 4, 2005

Tony Clark, President
Susan Wefald, Commissioner
Kevin Cramer, Commissioner
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dear Commissioners:

Thank you for requesting my opinion regarding the need for an auctioneer's or auction clerk's license to sell items through an Internet auction service. It is my opinion that sales similar to those conducted by eBay are not auctions within the contemplation of the statute. Because eBay does not conduct actual auctions, it is not an auctioneer, so eBay does not need an auctioneer's license, regardless of its domicile. Likewise, persons or businesses that assist sellers in placing items for sale on eBay are not conducting an auction or acting as auctioneers. Further, because the statute anticipates that an auction clerk works in conjunction with an auctioneer at a public auction, persons or businesses that assist sellers in placing items for sale on eBay are not required to obtain a clerk's license. There are various other businesses that offer items for sale via the Internet in a manner that more closely resembles traditional or conventional auctions. Whether those entities are required to obtain an auctioneer's or clerk's license depends on the facts of each case.

ANALYSIS

You first ask whether an Internet auction service domiciled either inside or outside of North Dakota is required to obtain an auctioneer's license in North Dakota. Chapter 51-05.1, N.D.C.C., regulates licensure for auctioneers. Section 51-05.1-04(1), N.D.C.C., defines an auctioneer as "a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation."

There are a number of different types of "Internet auction" services. Certainly the most widely known service is that offered by the Internet company "eBay, Inc." ("eBay"), which

provides a site where sellers can list their items, and potential buyers can bid on those items or otherwise offer to purchase them from the sellers. Other Internet sites transmit live audio-video feeds of auctions, and allow potential bidders to place real-time bids online during the course of those auctions.¹ While the vast number of different types of these services prevents me from opining on all of them, I can specifically address the eBay model, and I will provide guidance for addressing other models.

Based on the statutory definition of “auctioneer,” it is necessary to determine if a service is: 1) a person; 2) who, for compensation; 3) sells or offers for sale real or personal property; 4) at public auction; 5) as a whole or partial vocation.² Chapter 51-05.1, N.D.C.C., does not define “person.” Section 1-01-49(8), N.D.C.C., contains a definition of “person” that is to be used unless the context requires otherwise. Under that definition, “person” includes an “organization.”³ An “organization” includes “a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.”⁴

The context in which “person” is used in N.D.C.C. ch. 51-05.1, however, indicates that the Legislative Assembly intended a different meaning. The definition of “auctioneer” uses the single term “person,” while the definition of “clerk” in the same section expands the list of eligible entities beyond “person” to include “any person, firm, partnership, copartnership, association, corporation, or limited liability company.” The inclusion of other non-individual entities to the definition of “clerk” while excluding them from the definition of “auctioneer” indicates the Legislative Assembly did not intend those additional entities that are not individuals to come within the definition of “auctioneer.”

In addition, whether a person is an “auctioneer” depends on whether the person’s “whole or partial vocation” is being an auctioneer.⁵ The North Dakota Century Code does not define “vocation,” and so we must use the plain meaning of that word.⁶ A dictionary definition of “vocation” is a “regular occupation or profession, esp. one for which a person is specially suited or qualified.”⁷ Whether being an auctioneer is a person’s “whole or partial vocation”⁸ is fact-specific and to be determined on a case-by-case basis.

¹ For example, see the Ritchie Bros. Auctioneers website:
<http://www.rbauction.com/index.jsp>.

² N.D.C.C. § 54-05.1-04(1).

³ N.D.C.C. § 1-01-49(8).

⁴ N.D.C.C. § 1-01-49(5).

⁵ N.D.C.C. § 54-05.1-04(1).

⁶ N.D.C.C. § 1-02-02.

⁷ The American Heritage Dictionary 1353 (2d coll. ed. 1991).

⁸ N.D.C.C. § 54-05.1-04(1).

But the fact that auctioneering must be a “vocation” appears to preclude the licensure of businesses as auctioneers. Businesses do not have “vocations,” but rather provide services or sell goods. Employees of businesses, including online auction services, may have auctioneering vocations, and may therefore be required to obtain an auctioneer license, but the businesses themselves do not. Accordingly, as used in N.D.C.C. § 54-05.1-04, “person” only means a single individual, rather than the broader definition of “person” in N.D.C.C. § 1-01-49(8). Applying that definition, eBay does not meet the definition of a “person” because it is a corporation rather than an individual.⁹ Whether that conclusion would apply to other auction sites depends on the facts of each situation.

Recognizing the changing landscape produced by the advent of the Internet, the Legislature enacted specific legislation to regulate one type of Internet auction business. Chapter 36-05.1, N.D.C.C., prohibits “internet livestock auctions” from transacting business in North Dakota unless licensed under chapter 36-05.1. “‘Internet livestock auction’ means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or web site within or outside the state through the use of the internet.”¹⁰ Thus, although business entities cannot be licensed under N.D.C.C. ch. 51-05.1, an internet livestock auction is required to be licensed under N.D.C.C. ch. 36-05.1. Whether other types of businesses that offer similar Internet sales ought to be regulated is an issue the Legislature may need to address.

The second test is whether compensation is paid.¹¹ eBay offers its services to members only. There is no fee to become a member, but a registration process is required.¹² While eBay does not charge its members to buy an item through the eBay system, eBay does charge those members who place items for sale on eBay. The seller is required to pay an “insertion fee” for placing the item for sale and, if the item is sold, the seller is required to pay a “final value fee.” The insertion fee is a flat, nonrefundable fee based on the seller’s initial offering price and ranges from \$0.25 to \$4.80.¹³ The “final value fee” is a percentage of the selling price.¹⁴ Because eBay receives compensation, it meets the second prong of the statute. Again, whether another entity receives compensation is fact-specific.

⁹ See Earth Flag Ltd. v. Alamo Flag Co., 153 F.Supp.2d 349, 351 (S.D.N.Y.,2001). (“eBay is a Delaware corporation, with its principal place of business in San Jose, California.”).

¹⁰ N.D.C.C. § 36-05.1-01(2).

¹¹ N.D.C.C. § 54-05.1-04(1).

¹² eBay Registration Form (2005), *available at*:

https://scgi.ebay.com/ws/eBayISAPI.dll?RegisterEnterInfo&siteid=0&co_partnerid=2&usag e=0&ru=default&raflid=0&encRaflid=default.

¹³ eBay.com fees (2005), *available at* <http://pages.ebay.com/help/sell/fees.html>.

¹⁴ Id.

The third prong requires that the person "sells or offers for sale real or personal property."¹⁵ eBay's "User Agreement" states, in part:

3.1 eBay is not an Auctioneer. Although we are commonly referred to as an online auction web site, it is important to realize that we are not a traditional "auctioneer." Instead, the Site acts as a venue to allow anyone to offer, sell, and buy just about anything, at anytime, from anywhere, in a variety of pricing formats, including a fixed price format and an auction-style format commonly referred to as "online auctions" or "auctions." We are not involved in the actual transaction between buyers and sellers. As a result, we have no control over the quality, safety or legality of the items advertised, the truth or accuracy of the listings, the ability of sellers to sell items or the ability of buyers to pay for items. We cannot ensure that a buyer or seller will actually complete a transaction.¹⁶

The United States District Court for the Southern District of California has summarized the eBay process as follows:

eBay provides an Internet website service where over 25 million buyers and sellers of consumer goods and services have come together to buy and sell items through either an auction or a fixed-price format. Pursuant to their agreement with eBay, users set up user IDs or "screen names" to conduct business on eBay's website in a semi-anonymous fashion. Buyers and sellers reveal their real identities to each other in private communications to complete sales transactions.

eBay's website allows sellers to post "listings" (or advertisements) containing descriptions of items they wish to offer for sale; and it allows buyers to bid for items they wish to buy. People looking to buy items can either browse through eBay's 4,700 categories of goods and services or search for items by typing words into eBay's search engine. Every day, eBay users place on average over one million new listings on eBay's website. At any given time, there are over six million listings on the website.¹⁷

¹⁵ N.D.C.C. § 54-05.1-04(1).

¹⁶ eBay User Agreement (2005), *available at* https://scgi.ebay.com/ws/eBayISAPI.dll?RegisterEnterInfo&siteid=0&co_partnerid=2&usag e=0&ru=http%3A%2F%2Fpages.ebay.com%2Fhelp%2Fpolicies%2Fuser%2520agreeme nt.html%3FssPageName%3Df%3Af%3AUS&raflid=0&encRaflid=default.

¹⁷ Hendrickson v. eBay, Inc., 165 F.Supp.2d 1082, 1084 (C.D. Cal. 2001) (footnotes omitted).

eBay's User Agreement and the court's summary clearly show that eBay itself is not offering to "sell" anything;¹⁸ the offer for sale is made by the member who places the goods for sale. Because eBay does not "sell or offer for sale real or personal property," the third prong of the test also fails and eBay cannot be considered an "auctioneer" as defined in North Dakota law. It is therefore my opinion that since eBay is not an auctioneer it does not need an auctioneer's license, regardless of its domicile. Whether another entity is actually selling real or personal property depends on the circumstances of each case.

The fourth prong is whether the sale is at "public auction."¹⁹ "Cases interpreting [the phrase 'pubic auction'] generally, and as used in the Uniform Commercial Code, have held that several conditions, such as publicity, competitive bidding and invitation to the public must be met before a sale can be classified as a public sale."²⁰ This is, of course, a fact-specific determination to be made in each case.

You also ask whether an auctioneer or clerk's license is required for what you call an "Internet auction trader/listing service provider" ("listing service provider"). You indicate that listing service providers act as agents for individuals who would like to sell merchandise through Internet auction services. They may take consignments of merchandise, arrange to have that merchandise offered for sale through Internet auction services, deliver the merchandise and collect and disperse the proceeds from any sale.

Whether a listing service provider is an "auctioneer" depends on the resolution of several factual issues as applied to the five criteria provided in N.D.C.C. § 51-05.1-04(1). But at least as far as a listing service provider who assists a seller in selling items on eBay is concerned, for the reasons mentioned, such a provider is not an auctioneer.

A "clerk," on the other hand, is

any person, firm, partnership, copartnership, association, corporation, or limited liability company, who for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, the buyer's name or number, to collect all proceeds of said sale, to pay all expenses

¹⁸ See also 86 Ops. Cal. Atty. Gen. 48, Opin. No. 02-111 (Apr. 10, 2003) ("We have little doubt that eBay does not sell or offer to sell or buy or offer to buy, on behalf of another or others . . ."); Gentry v. eBay, 99 Cal. App. 4th 816, 827 (2002) ("eBay is not in the business of selling or offering to sell the collectables at issue; rather, it is the individual defendants who sold the items to plaintiff, using eBay as a venue.")

¹⁹ N.D.C.C. § 54-05.1-04(1).

²⁰ Liberty National Bank of Fremont v. Greiner, 405 N.E.2d 317, 321 (Ohio 1978).

connected with the sale, to prepare a full closing statement of all receipts and disbursements, and make settlement thereon to parties properly entitled thereto within a reasonable length of time.²¹

Whether an entity is a “clerk” also depends on the facts of each case, so I cannot issue a general opinion on the question. One thing to note when considering the question is that when the term “clerk” is used within the chapter as a whole, it is always used in the context of an “auction.”²² The rules of interpretation state that “[t]he entire statute is intended to be effective”²³ and that “a just and reasonable result is intended.”²⁴ Therefore, the term “clerk” cannot be looked at in isolation, but must be viewed in context with the entire chapter, including the term’s association with an “auction.”

State law does not define the term “auction,” but the plain meaning,²⁵ dictionary definition of “auction” is a “sale of property to the highest bidder.”²⁶

In the eBay case, the sale does not always go to the highest bidder. If an item is offered for sale in a fixed price format, then the first member willing to pay that price will acquire that item, even if another member is willing to pay a higher price. If an item is offered in an auction format, the item still may not go to the member willing to pay the highest price, but rather to the member who offers the highest price within the time limit set by the seller. Once the time limit has expired, the item is sold even if other members are willing to pay a higher price.

Therefore, if an auction is defined as a sale of property “to the highest bidder,” an Internet auction service like eBay would not meet the definition of “auction.” It follows that if the Internet auction service’s activities do not meet the definition of an auction, then the actions of a listing service provider are not that of a traditional “auction clerk” and no clerk’s license is required. Correspondingly, if a listing service provider is providing services at an actual “auction,” as is the case in some Internet sales websites, that listing service provider may need to obtain a clerk’s license in order to provide that service in North Dakota if its activities fall within the statutory definition of “clerk.”

Sincerely,

²¹ N.D.C.C. § 54-05.1-03.1(2). Notably, unlike an auctioneer a clerk may be a business or an individual.

²² See e.g., N.D.C.C. §§ 51-05.1-01.1(1), 51-05.1-03(1)(b), (c), (f), (g).

²³ N.D.C.C. § 1-02-38(3).

²⁴ N.D.C.C. § 1-02-38(4).

²⁵ N.D.C.C. § 1-02-02.

²⁶ Blacks Law Dictionary 125 (7th ed. 1999).

LETTER OPINION 2005-L-40
November 4, 2005
Page 7

Wayne Stenehjem
Attorney General

njl/sam/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

1400 E Washington Ave
PO Box 8935
Madison WI 53708-8935
Email: web@dri.state.wi.us
Voice: 608-266-2112
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TTY: 608-267-2416

Donsia Strong Hill
Secretary



January 14, 2004

Ms. Kara Neher, Consumer Specialist
Wisconsin Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison WI

Re: Regulation of Internet site under ch. 480, Stats. (Your file #429279)

Dear Ms. Neher:

Chapter 480 of the *Wisconsin Statutes* regulates auctioneers and auction companies. You asked whether operations of an Internet website by a corporation, eBay Inc. are within the scope of the regulation of auctioneers and auction companies under ch. 480, Stats. I understand website operations to be essentially as follows:

The website operator charges fees to list and sell items. The website is the venue for sellers to list items and solicit offers to buy and for buyers to bid on items. The Internet operator does not hold itself out as an "auctioneer." Its user agreement and other information often reference "auctions."

The Internet operator and a person offering to sell an item (owner) agree on the auction procedures. The operator establishes an account for the owner. The owner provides a description of the item, sets the minimum bid and other terms. During the course of the auction, bidders may e-mail the owner. If a bidder's maximum bid is outbid by another bidder, the Internet operator notifies the bidder by e-mail. Bidding ends when the auction ends. The Internet operator notifies the owner and the high bidder e-mails when the owner's listing ends.

The owner and the high bidder contact each other. The winning bidder pays the owner directly for the item, and it is the owner's responsibility to fulfill the order once payment terms are met. The contract for sale is between the winning bidder and the owner.

Chapter 480, Stats., provides, in part, that,

(a) No person may act as an auctioneer or use the title "auctioneer", "registered auctioneer", "certified auctioneer", "licensed auctioneer" or any similar title unless the person is registered as an auctioneer under this chapter.

(b) No person may act as an auction company unless the person is registered as an auction company or as an auctioneer under this chapter.
Sec. 480.08 (1), Stats.

The terms "act as an auctioneer" and "act as an auction company" are not defined in the *Wisconsin Statutes*, however, "auction," "auctioneer" and "auction company" are defined as follows:

"Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers.
Sec. 480.01 (1), Stats.

"Auctioneer" means an individual who engages in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction. Sec. 480.01 (4), Stats.

"Auction company" means a person who manages an auction or who has primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received by an auctioneer, the person's principal or any other person at or as a result of an auction. Sec. 480.08 (2), Stats.

As described above, the eBay website does not come within the authority to regulate auctions and auctioneers specified in Wis. Stat. ch. 480. As indicated in the statutory descriptions of "auction" and "auctioneer," the conduct regulated under Wis. Stat. ch. 480 is the traditional auction where an auctioneer, an individual, i.e. a human being, invites offers from prospective purchasers and accepts offers. The eBay website is not an "auctioneer" because it does not act as an auctioneer or use the title "auctioneer." The site does not conduct an "auction" as defined in the statutes because the website listing is not a series of invitations to prospective purchasers. The website is not an "individual." The website does not accept offers. The website is not an "auction company" because it does not manage an auction or have primary responsibility for handling the proceeds of an auction and because the website does not constitute an "auction."

Ms. Kara Neher, DATCP
January 14, 2004

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Chapter 480 also provides a specific exemption that may apply to transactions conducted through eBay. Under Wis. Stat. § 480.02(2)(d), Chapter 480, the law regulating auctions and auctioneers, does not apply to:

An auction conducted by the owner of the goods or real estate for sale if the owner has held the goods or real estate for his or her personal use for at least one year immediately preceding the date of the auction.

The scope of regulatory authority in Wis. Stat. ch. 480 and the exemption for owner-conducted auctions do not bring website operators such as eBay within the regulatory jurisdiction of the Department of Regulation and Licensing.

You note that PayPal, a company owned by eBay, Inc. is used to process transactions through eBay and PayPal has primary responsibility for handling the proceeds of eBay transactions. Because the eBay website operations are not within the scope of the regulatory authority in Wis. Stat. ch. 480 as an "auction," the practices of PayPal are not subject to the licensing requirements of Wis. Stat. ch. 480 as an auction company.

Sincerely,



William Dusso
General Counsel

cc: Andrew Conrad Locke
eBay Inc.
Patty Hoefl, Administrator, Division of Board Services
Sandra Rowe, Administrator, Division of Enforcement
Attorney Colleen Baird, Division of Enforcement
Steve Gloe, General Counsel

Leslie L. Kacer

From: Valerie [REDACTED]
Sent: Monday, June 30, 2014 11:27 PM
To: HB3038 Interim Charge
Subject: HB3038 Feedback

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

RESPONSE: I believe a Tx Auctioneers license should be required for online auctions where the items/assets being sold are located in Texas when the items/assets are sold by someone other than the rightful owner of the property. Selling any property on someone else's behalf and creating that agent agreement requires handling money that belongs to the owner of said property and should be held accountable and have a system of checks and balances and remedies to safeguard the seller and consumer. My opinion includes social media sites, Etsy, Pinterest, etc. Large companies such as eBay that have a mechanism of third-party checks and balance in place, I believe is adequate and should be exempt from such licensing requirement.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

RESPONSE: Yes. (same response as above)

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

RESPONSE: no, they are handling their own property and money.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

RESPONSE: any employee that solicits, negotiates, or conducts the auction.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

RESPONSE: I would presume that an auction conducted outside of Texas would be assets located in another state and sold by an auctioneer outside of Texas. Conducting business in Texas; follow Texas laws.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Valerie Grimm
Martindale Auction Services
713.248.4902
www.martindaleauction.com

Member National Auctioneer Association
Member Texas Auctioneers Association
Member TAA Board of Directors 2011-2013, 2014-2015 Terms
Member Fellowship of Christian Auctioneers

Leslie L. Kacer

From: Steve [REDACTED]
Sent: Monday, June 30, 2014 11:36 AM
To: HB3038 Interim Charge; Erule Comments
Subject: HB 3038 (83R) Commentary

June 30, 2014

Ms. Pauline Easley
Legal Assistant, General Counsel's Office
Texas Department of Licensing and Regulation
PO Box 12157
Austin, Texas 78711
Facsimile: 512/475-3032

By Email: erule.comments@tdlr.texas.gov

Dear Ms. Easley:

We write to comment on the impact that the newly changed auction laws in Texas would have if extended to consumer auction websites with nationwide user bases. Specifically, there are six questions raised by the Texas Department of Licensing and Regulation for which responses are requested, and our responses and reasoning are below.

Before turning to the responses, however, we would like to provide a bit of background about our company. GunBroker.com, LLC ("GunBroker.com"), based in Kennesaw, Georgia,[1] has been operating the website at www.gunbroker.com for fifteen years, since 1999. In that time, GunBroker.com has become the dominant player in the online market for firearms, ammunition, hunting gear and the like. We estimate that over 70% of the active listings for the sale of firearms in the U.S. (not including retailers or manufacturers) are found on the GunBroker.com website, as we generally have over 650,000 listings on the site and conclude up to 6,000 transactions per day.

GunBroker.com takes pride in its efforts to make online commerce in firearms safe and secure for its users. Under mandatory Site Rules applied and enforced on our site, "universal background check" is in effect and applied to all sales of firearms over our site -- that is to say, each firearm buyer must take delivery of the item through a Federal Firearms License (FFL) holder and submit to a full background check. This, of course, is in excess of the requirements of current U.S. federal law where in-state personal firearm sales can be accomplished without a background check in many jurisdictions (including Texas), but we believe it makes good business sense. Most of the sellers over the site are firearms dealers or pawnbrokers themselves, making use of the Internet to expand the group of potential buyers for their inventory. As these sellers are highly regulated by the federal Bureau of Alcohol, Tobacco and Firearms (ATF) themselves, they are keen to be sure that their online practices are fully in compliance with applicable law. In addition to universal background check, GunBroker.com also applies cutting-edge identity verification, much like that employed by banks and brokerages for online transactions, to its sellers and buyers. Because of these policies, GunBroker.com has received a commendation from the ATF for raising standards of compliance in the industry, as well as positive mentions from former NYC Mayor Michael Bloomberg's Mayors Against Illegal Guns group.[2]

The marketplace established at the GunBroker.com website is very different from the traditional in-person auctions that state auctions laws were designed to regulate. Most importantly, GunBroker.com never comes in contact with, takes title to, or receives either the items being auctioned or the sale proceeds. GunBroker.com does not act as agent for either buyer or seller. Instead, it operates as a technologically advanced advertising medium for the 21st century, much like classified ads in the newspaper. Then buyer and seller come to terms on price over the website, which can happen through clicking on a “Buy Now” feature, or participating in an auction-style electronically-generated bidding process, where the highest bidder at the end of the time set by seller receives the item. Parameters for the electronic sale process are set by seller, within limits established by the Site Rules. Buyer and seller then make payment directly with one another, and seller sends buyer the item (through a gun dealer, if the purchased item is a firearm). GunBroker.com is compensated with a small success fee on each transaction. Sellers can also pay for so-called “premium” listings.

Given the context above, our responses to the TDLR questions are as follows:

1. *Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?*

Response: No. First, as noted above, the differences between online auctions and the traditional auctions subject to state regulation are significant, to the point where they may be difficult, if not impossible, to bridge for the regulators and regulated alike.

State auctioneer laws commonly contain requirements -- such as trust accounts and requirements surrounding “bid calling” -- that are simply inapplicable in the context of the online sales transactions taking place on these consumer sites. In addition, common auctioneer regulations for the maintenance/delivery of records for each sale often contain requirements with which many of these websites are not equipped to comply. As an example, reports that include the date of delivery of the item to buyer, or of the date of delivery of the proceeds of sale to seller, include information that GunBroker.com does not seek or obtain. In GunBroker.com’s case, both of these steps occur directly between seller and buyer without GunBroker.com’s involvement or knowledge (and we would note that this is also true for eBay.com). In short, GunBroker.com, like most of the online sites at issue, would ostensibly need to needlessly redesign its entire business process in order to comply with these varying state laws, which were not designed with online processes in mind.

An important and related factor is the fact of the nationwide user base of most of the consumer auction websites, and the difficulty of compliance with the various -- and perhaps conflicting -- auction laws of these many states. If Texas auction laws and regulations were to be applied to GunBroker.com and similar sites by virtue of their merely having one or more Texas residents as users, then the auction laws of up to thirty (30) states[3] would be similarly applicable to this and similar websites. Given that these laws are designed to regulate a physical process taking place on property located within a regulating state, it goes without saying that the possibility of conflicting state laws applying to any one company was not considered in designing these laws. Yet the businesses hosting websites used by residents of all states would be faced with the formidable task of compliance with each of these laws, based upon no greater nexus with each state than having one or more user resident in that state.

Speaking of nexus, if website companies such as ours were forced to employ a Texas licensed auctioneer in order to comply with the Texas regulations, our costs would be significantly increased by the creation of tax locus where none previously existed. As a small business, we have taken extreme care in not having employees in various states, as having an employee makes part of the website

business' revenue taxable in that state. We have no assets or employees in Texas currently, and while Texas does not have an income tax, many other states with similar auction laws do. Having to figure out the taxation issues for all these states would place an unreasonable burden on us, as well as other small businesses.

Second, there is no need for regulations imposing these types of requirements, which were instituted in order to protect the public from unsavory practices in physical auction settings. Many of the potential dangers in physical auction settings are simply not present in the online setting. For example, trust accounts and attendant regulation of the monies and proceeds of sale are not necessary, as buyers themselves keep the purchase price until remitted directly to seller. Recordkeeping requirements are similarly not needed, as these sites all have user accounts allowing buyers and sellers to keep exhaustive electronic records of all pertinent information.

Where there is potential for fraud, online consumer auction sites have different – but just as effective – consumer protection mechanisms. GunBroker.com, like most online consumer auction sites, has an anti-fraud program that works well. There is very little fraud occurring on the site in the first place, and in the case of non-compliance with Site Rules, GunBroker.com's support personnel are there to assist users (e.g., requests for refunds of success fees for non-paying bidders is one category of user support requests that our personnel are equipped to handle). Third party watchdog sites such as BBBOnline serve as effective neutrals in consumer complaints against these online businesses as well.[4] Finally, the Federal Trade Commission, as well as state government consumer protection offices, are quite active and serve as effective policing forces with respect to any unfair or deceptive trade practices in the online world.[5]

Third, we would also note that if there were something “broken” with respect to consumer auction websites, we would see consumers react accordingly. This is not happening. Instead, these websites are steadily rising in popularity. For its part, GunBroker.com just passed the mark of having two million users in “active” status, meaning they trade at least once per six months, as well as the mark of having had more than three billion dollars (\$3,000,000,000) in trades over the site's history.

To summarize, imposing state auction laws and regulations on online consumer auction sites such as GunBroker.com is unnecessary, as these laws do not contemplate online processes and other effective mechanisms are in place to protect consumers on these sites. Consequently, imposing these laws on sites like GunBroker.com would likely simply increase transaction costs for consumers without providing any attendant benefit to consumers or businesses.

2. *Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?*

Response: No. As described above, Texas consumers are protected in their use of these websites by other, equally effective mechanisms (including, notably, the Texas Consumer Protection Division of the Texas Attorney General's office). As such, there is no need for such protective measures. Such a requirement would only slow down the auction process, increase consumer costs passed through by online auction sites who suffer increased state-by-state compliance costs and provide no offsetting advantage to consumers or businesses.

3. *Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?*

Response: To the extent this question implies whether sellers using online auctions should be required to hold an auctioneer license before using an online auction to make their listing, we believe such requirement would be incredibly burdensome and serve no benefit to the public.

If the question is whether a Texas resident should have to employ a licensed auctioneer in order to auction his or her own property, we would say “no.” Disposing of one’s own property is something that laws usually carve out of statutes and regulations that apply to various businesses. To take but one example, under U.S. federal law, Texas residents (like the residents of all states that do not prohibit this) are free to sell their firearms to other Texas residents, without going through a licensed gun dealer to do background checks and transfer title, so long as they do not cross the line of “being in the business” of dealing in firearms. This exception is commonly called the “gun show loophole,” but it is really nothing of the sort. It applies to any transaction wholly within a state between non-dealers, and it exists to allow people to exercise their rights as free citizens to dispose of their own property without government intervention.

We would also note that many of the states that do regulate auctions have carve-outs for persons disposing of their own property. For example, in Florida’s law, “Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell” is the first exemption from the requirements of having a licensed auctioneer to conduct auctions in Florida. Similar exemptions exist in Wisconsin, South Carolina, West Virginia, Illinois and North Carolina, to name a few.

4. *Which employees at an auction company should be required to hold a Texas auctioneer license? Why?*

Response: We do not have a comment on this issue, other than to state that if the types of employees at auction companies required to be auctioned is increased, the additional costs of such licensure is likely to be passed on to the customers, with likely disproportionate impacts on small businesses and consumers.

5. *How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?*

Response: Our legal team has reported that there are no cases offering precedents in Texas to help in interpreting this particular language. As such, the language is subject to more than one interpretation. One interpretation would be a sale where both the buyer and seller are not located in Texas at the time of the sale. Another interpretation would be a sale where either the buyer or the seller, and also the company facilitating the transaction, was not located in Texas at the time of the sale. Yet another interpretation might apply to an auction where the third-party company facilitating the auction sale is located outside the State of Texas.

However, we would note that in light of the variety of different approaches taken to the question of jurisdiction over Internet transactions, website providers and users by various state courts in various circumstances, the applicability of the Texas auction laws to Internet auction websites should not be based upon an interpretation of this language.[6] Instead, it makes far more sense to explicitly exempt certain Internet transactions from the scope of the Texas auction laws, as outlined in #6 below.

6. *If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?*

Response: We would exempt ALL internet auctions, auction-style transactions and sales from the Texas auction laws. Other states have evidently drawn the same conclusion. Of the thirty (30) states having

generally-applicable auctioneer laws and regulations,[7] many have updated their laws to address the realities of emerging technology by exempting internet-based transactions. These include Arkansas, Illinois, Louisiana, Maine, North Dakota, Oklahoma, Ohio and Pennsylvania (8 states). Illinois' statute is notable in that it requires so-called "Internet Auction Listing Services" to merely register with the Auctioneers Board but otherwise exempts the online auctions from the traditional auctions laws. In addition, three more states have interpreted their laws as not being applicable to Internet auctions (these include Alabama, Kentucky and Tennessee). Thus, a significant number of states have drawn the conclusion that consumers of their states do not need the additional protections of regulation of Internet auctions and sales by the applicable state Auctioneers Boards.

As noted above in items #1 and #2, we believe extending these laws to Internet transactions would only serve to increase the costs to consumers without significant attendant benefit. To expand on this point a bit further, faced with the decision to regulate or not to regulate, government entities should not ignore the burden on businesses, both in terms of time and monetary expenditures, of each new regulatory requirement they may impose. These costs are particularly painful for small businesses who have neither the staff to work through compliance requirements nor the in-house legal team to assess the applicability of the new regulations. The decision to regulate should thus be made with a keen eye towards balancing and assessing the severity of the problem at hand, the direct benefit to consumers from the regulation, and the costs and other disadvantages to the business community of the regulation. In this case, we would submit that the problem is not at all severe, that imposing these regulations on Internet auction sites would not result in any material benefit for consumers, and that the price to be paid by businesses would be quite high. In fact, the tangible public benefits are so scarce that it seems the only genuine purpose for such regulations is protectionism of the traditional auction industry.

To conclude, freedom from unnecessary regulation and obstacles for businesses has been a rallying cry and one of the key selling points of the State of Texas generally, as it has attracted more and more over-regulated and overtaxed residents and businesses from other states since the turn of the century. Making the decision not to extend Texas auction laws to auctions conducted on Internet websites would represent yet another example of this excellent Texas public policy and serve to further demonstrate that Texas is ahead of the curve in terms of smart governance and is truly living up to its "Open for Business" motto.

Sincerely,

Steve Urvan
CEO & Founder, GunBroker.com

[1] Neither GunBroker.com, LLC nor any of its affiliated companies, have any personnel or operations in Texas.

[2] See In the Business Outside the Law, Mayors Against Illegal Guns, page 11, available at <http://libcloud.s3.amazonaws.com/9/a6/7/2065/InTheBusiness.pdf>.

[3] As explained in #6 below, this is the number of states having similar laws.

[4] As of 2014, of the 107 complaints entered on BBBOnline.com relative to GunBroker.com, 61 are shown as having been resolved between GunBroker.com and the consumer, 36 are shown as "GunBroker.com made good faith attempt to resolve but consumer not satisfied," 9 are shown as not having received information from GunBroker.com, and 1 is shown as "GunBroker.com failed to resolve the complaint."

[5] We would note that GunBroker.com has not received any FTC inquiries, and only one query from a state agency, which was subsequently discontinued based upon our response.

[6] See, e.g., 50 N.J. Prac., Business Law Deskbook, Section 36-131 (2014 edition), discussing in personam jurisdiction over passive and interactive websites.

[7] We are not considering laws that regulate specific types of auctions, such as state surplus auctions, real estate auctions or the like.

Leslie L. Kacer

From: Tracie Davis [REDACTED]
Sent: Monday, June 30, 2014 11:50 PM
To: HB3038 Interim Charge
Subject: Response to questions.

Here is my response to the 6 questions regarding HB3038:

1. I do not believe a Texas auctioneer license should be required to post items for an online only auction on self-regulated sites such as EBay.
- 2: No comment at this time.
3. I do not believe a Texas auctioneer license should be required of an individual to conduct an auction of their own property not more than once a year.
- 4: A Texas auctioneer license should be held by: owner/owners of auction company and any live bid caller that accepts compensation for his bid calling services. I believe the owner/owners of the auction company should be responsible for its employees and representatives such as; sales reps, clerks, cashiers, etc. because they are representing the owner of that company.
- 5: No comment at this time.
- 6: I have no other revisions at this time other than the ones stated above.

Tracie Davis
TX license # 16773

Leslie L. Kacer

From: John Swofford [REDACTED]
Sent: Monday, June 30, 2014 11:59 AM
To: HB3038 Interim Charge
Cc: John Swofford
Subject: HB 3038 (83R)

Question 1. While I believe that everyone that sales property by "Auction" in Texas should be licensed it seems to be a bit high to set the bar. I cannot imagine how hard it would be to police this. It seems to me that property already governed by another state agency should not be at the top of the list of priorities for TDLR, i.e. Real Estate, Motor Vehicles and such. Out of State companies also seem like they would be next to impossible to police. But I do think the Texas consumer deserves to be protected from the Out of State companies. If an Out of State company doesn't have to play by the same rules as a Texas company then we have a big problem.

Question 2. While we cannot give an Out of State company an advantage over an In-State company, maybe we can decide what is most important to protect. Maybe there should be a type of auction that is okay while other misc auctions are not protected.

Question3. The Statute as it is written is fine with me.

Question 4. The individuals who own the company are the ones who should be licensed. What good does it do to license a salesman if he has no say so in what happens with the company. We don't license car salesmen so why license auction salesmen. While a salesman should be able to negotiate fees and terms the owner should sign the contract and be held accountable. The company and its owners are who should be licensed and held accountable. And of course the bid caller.

Question 5. If any part of the transaction happens within Texas. Such as Title Transfer, Monies Deposited, location of said property, actual bid calling, and if the consumer is able to file against the Recovery fund then it is a Texas auction.

John Swofford
General Manager
America's Auto Auction Austin Texas
16611 South IH-35
Buda, TX 78610
Off. (512) 268-6600
Cell. (682) 429-6510

Leslie L. Kacer

From: Charlie Bolante [REDACTED]
Sent: Tuesday, July 01, 2014 12:57 AM
To: HB3038 Interim Charge
Subject: Auction Laws opinion

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

No, not all of these websites should not be considered an auction. They are all different types of companies that provide end users a platform to exchange goods without the need of a licensed auctioneer.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

No. Online auctions provide a platform for individuals to sell their items without the needs for an individual to act as an auctioneer.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

This question does not apply to me or my company.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

If a company is selling a company product, then an auctioneer's license should not be required as long as that company abides by the local laws, including the consumer-protection laws.

5. How do you define "a sale or auction conducted outside of this state," as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

I don't know, I'm not an auctioneer nor do I intend on being one.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

This is too confusing for me to spend time studying it.

Charlie Bolante



Leslie L. Kacer

From: HB3038 Interim Charge
Sent: Thursday, July 10, 2014 12:36 PM
To: Leslie L. Kacer
Subject: FW: auctioneers Comments

From: Texas Storage Auctions [REDACTED]
Sent: Wednesday, July 09, 2014 10:38 AM
To: HB3038 Interim Charge
Subject: auctioneers Comments

My name is Keith Faske TL# 13484. I am responding to your questions after the June 30 date. I am sorry for being late, however this showed up in my junk mail.

Please consider my response as I have always been vocal on the subject of having a license. As a licensed auctioneer in good standing since 2000, and a member of the Texas Auctioneer's Association for that long, I have always contended that ANYONE having the words "bid and auction" needs to have a license. I have attended several workshops to redefine the test for auctioneers and have always made comments to Jim Sample at our continuing education and TAA convention of this situation. To that end I would answer the following:

1. Should a Texas auctioneer license be required to conduct an online auction in which a consumer places competitive bids to purchase a product, including on auction websites like eBay, uBid, Listia, QuiBids, bidtopia and Overstock and on social media web sites such as Facebook, Twitter, Pinterest and Etsy? Why?

I do not believe that a "Full" license should be in order for online auctioneers, however I do think if such a license is considered it to read "Provisional Online Auctioneer" and be subject to the continuing education that is now in place for live auctioneers. I think that with the knowledge of what can and cannot be sold in the state might help with those that just put anything up for auction. This also would weed out the unscrupulous Overseas sellers and benefit licensed auctioneers in having those that do not want to take the time to follow law and procedure take their auction goods to a licensed auctioneer for sale.

2. Should a Texas auctioneer license be required to conduct an online auction in which an item for sale is located in Texas and the potential buyer is a resident of Texas? Why?

No, I feel this would be limiting on "customers" trying to buy in the great state of Texas. Already we are required to pay sales tax if we are bidding on items "in State" which since I buy on ebay, I look for similar items from out of state sellers. Most of what I buy is for resale anyway.

3. Should a Texas auctioneer license be required for a person to conduct an auction of the person's own property? Why?

Yes a person should have a license to conduct an auction of personal property. ANYONE who calls an auction in the state of Texas needs to have a license. This not only to protect bidders from shams, but to protect the integrity of the auctioneer industry as a profession.

4. Which employees at an auction company should be required to hold a Texas auctioneer license? Why?

Employees should have, at the minimum, taken the continuing education requirements so that they know the law concerning what can and cannot be sold at auction and the reasons why. Most employees are scouts for the the auction company and this way they would know laws like the chapter 345 code of Texas.

5. How do you define “a sale or auction conducted outside of this state,” as stated in Section 1802.002(a)(12) Texas Occupations Code (The Auctioneer Law)? Why?

Defining “outside the State” would be the major consideration. If it is a LIVE auction and not in Texas, then it would be outside the state. If it is an online auction, then the auctioneers residence would define whether it was in state or not.

6. If you could rewrite or change the Texas Auction Law (Chapter 1802, Texas Occupations Code), what would you change? Why?

Again it is my opinion that ALL persons conducting a sale with the words “AUCTION or BID” be required to have a license. Sheriffs, constables, federal officials, real estate agents, doctors, lawyers, and just about anyone that is considered to be a “professional” all have to have licenses to practice their field.

Auctioneering is also a profession that requires study of the law, technique in selling, and knowledge of bookkeeping just name a few. As it stands, most Sheriffs and the others listed above do not know the law concerning auctions. How can they conduct an auction? Why then are they not required to have an auctioneers license?

To that end, I as an auctioneer cannot have a gun and call myself a sheriff, constable or federal official. Nor can I sell real estate, practice as a doctor, lawyer, plumber, barber, electrician or any other “Licensed Professional” in the state of Texas. Why is it reasonable to let unqualified, unlicensed people do the job that I spend time and effort being licensed and knowledgeable as a Professional do my job?

Thank you for your consideration of my late response.

Keith Faske

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