

Summary of Public Comments at the Open Forum on HB 3038

The Auctioneer Education Advisory Board met August 28, 2014, in Austin to receive feedback for the Texas Department of Licensing and Regulation to share with the Texas House of Representatives' Licensing and Administrative Procedures Committee regarding the Committee's interim charge 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." During the Forum participants were asked to provide comments to six questions regarding implementation of HB 3038, legislation relating to the regulation and licensing of auctioneers that was enacted by the 83rd Texas Legislature in 2013. Those questions and a summary of responses to them by Forum participants are below.

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?

- Only a licensed auctioneer should be able to sell the property of another person in an online auction for property sold in Texas.
- The Internet is too large to be properly regulated by any agency or governmental entity.
- Any physical location in Texas that coordinates online auction activity should be licensed, including places where property is dropped off to be prepared for and then sold online or by consignment.

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?

- Only a licensed auctioneer should be able to sell the property of another person in an online auction for property sold in Texas.
- Ebay and similar online auction sites operate as a Texas auction since they have a competitive bidding process, thus only licensed auctioneers should be allowed to sell another person's property on these sites.
- An auctioneer license should not be required to sell another person's property on Ebay and on similar online auction sites because they are not true auctions since they have a set time at which point the auction automatically ends, not a bid caller determining the winning bid.
- If a Texas auctioneer license is required to sell any item to a person in Texas, then everybody in the world auctioning items online would need a Texas auctioneer license since Texans could be potential buyers for anything sold online.

- Use the Texas real estate law provision regarding sales tax when determining who should be licensed as an auctioneer so that an auctioneer license is required for the sale of any item in an online auction in which the seller must collect a sales tax from the buyer.
- Online auctions should be operated by licensed auctioneers to ensure that items prohibited by state or federal law are not sold in online auctions.
- It is interesting that Texas is the only state trying to regulate online auctions.
- Any online auction regulation should focus on protecting consumers.

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

- Yes, because this ensures the auction is conducted properly without fraud or deception such as shill bidding to increase the cost to purchase the item being auctioned.

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

- Auction company employees should be licensed if they do anything to direct the public to the auctioneer business, including managing web sites, producing commercial advertising, making sales calls, distributing items that contain an auctioneer's contact information and logos, and operating conference exhibits.

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" should mean that the property for sale is not located within the legal and physical confines of 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?

- Create a company auctioneer license that requires operation of the company by a licensed responsible party, similar to the Mississippi auctioneer law.
- Determine if Texas really should be regulating online auctions.
- Undo all of the HB 3038 changes to return to the Auctioneer Law to how it was prior to June 2013.
- Return the bid call requirement to the definition of "auctioneer."
- Ensure the terms and words in the Texas Auction Law are consistent to eliminate confusion.
- Provide exclusions from the Texas Auction Law for any online auctions similar to what is found in the Ohio, North Dakota, and Maine auction laws.
- Clarify whether or not online sales should require an auctioneer license.

- Change the Texas Auction Law to allow the Auctioneer Education Advisory Board members to be eligible to receive reimbursement from the State of Texas for travel to attend Board meetings.
- Ensure there are sufficient consumer protections in the Texas Auction Law.
- See if the Office of the Attorney General can enforce consumer protection provisions for online auctions instead of having the Texas Auction Law require auctioneer licenses for online auctions.
- Keep in mind when updating the Texas Auction Law that online auctions are now a popular business model for auctions.