TEXAS AUCTIONEER STUDY GUIDE

AUGUST 2026

NOTE:

This document is to be used as a reference guide only. Not all rules and statutes applicable to auctioneers have been included. Some information included provides excerpts only. You are responsible for knowing and understanding all rules, regulations, and statutes you may be required to comply with.

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AUCTIONEER DEFINITIONS

Antique – Any work of art, piece of furniture, decorative object, or the like, created or produced in a former period, or, according to U.S. customs laws, 100 years before date of purchase.

"As is" – Without warranty; buyers are responsible for examining and judging the property for their own protection.

Bank letter of guarantee – a letter issued by a bank on behalf of a customer guaranteeing payment up to the amount stated in the letter.

Buyer's premium – A percentage of the high bid added to the "hammer price" of an item.

Commission – The fee charged to the seller by the auctioneer for providing services; usually a percentage of the gross selling price of the item(s) established by contract (the Listing Agreement) prior to the auction.

Conditions of sale – The legal terms that govern an auction, including acceptable payment terms, buyer's premiums, possession and removal of goods (including storage), absolute or reserve auction, and other agree upon terms.

Deposit – The sum of money paid by the bidder for the privilege of bidding or as a percentage of the purchase price, especially on higher valued property. A deposit is commonly used to discourage casual or unqualified bidders. Unused deposits are returned to the bidder at the end of the auction.

Increment – The amount the bid increases by.

Provenance – Place or source of origin; the history of ownership.

USPAP - USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business and mass appraisal.

Sec. 2.106. DEFINITIONS: "CONTRACT"; "AGREEMENT"; "CONTRACT FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING" TO CONTRACT; "TERMINATION"; "CANCELLATION".

(a) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2.401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Sec. 2.201. FORMAL REQUIREMENTS; STATUTE OF FRAUDS.

(a) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(b) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) A contract which does not satisfy the requirements of Subsection (a) but which is valid in other respects is enforceable

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2.606).

Sec. 2.204. FORMATION IN GENERAL.

(a) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(b) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(c) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Sec. 2.209. MODIFICATION, RESCISSION AND WAIVER.

(a) An agreement modifying a contract within this chapter needs no consideration to be binding.

(b) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(c) The requirements of the statute of frauds section of this chapter (Section 2.201) must be satisfied if the contract as modified is within its provisions.

(d) Although an attempt at modification or rescission does not satisfy the requirements of Subsection (b) or (c) it can operate as a waiver.

(e) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Sec. 2.328. SALE BY AUCTION.

(a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(d) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

TITLE 1. UNIFORM COMMERCIAL CODE
CHAPTER 9. SECURED TRANSACTIONS
SUBCHAPTER A. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

Sec. 9.102. DEFINITIONS AND INDEX OF DEFINITIONS.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2.401, 2.505, 2.711(c), 2A.508(e), 4.210, or 5.118.

Sec. 9.103. PURCHASE-MONEY SECURITY INTEREST; APPLICATION OF PAYMENTS; BURDEN OF ESTABLISHING.

(a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral.

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in Subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Sec. 9.502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

(a) Subject to Subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 9.501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy Subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 9.503(a)(4) or (5) applies; and

(4) the record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

TITLE 2. COMPETITION AND TRADE PRACTICES
CHAPTER 17. DECEPTIVE TRADE PRACTICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.11. DECEPTIVE WHOLESALE AND GOING-OUT-OF-BUSINESS ADVERTISING.

(a) In Subsection (b) of this section, unless the context requires a different definition, "wholesaler" means a person who sells for the purpose of resale and not directly to a consuming purchaser.

(b) No person may wilfully misrepresent the nature of his business by using in selling or advertising the word manufacturer, wholesaler, retailer, or other word of similar meaning.

(c) No person may wilfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business. A person who advertises a liquidation sale, auction sale, or going-out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertising.

(d) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $500.

Sec. 17.12. DECEPTIVE ADVERTISING.

(a) No person may disseminate a statement he knows materially misrepresents the cost or character of tangible personal property, a security, service, or anything he may offer for the purpose of

(1) selling, contracting to sell, otherwise disposing of, or contracting to dispose of the tangible personal property, security, service, or anything he may offer; or

(2) inducing a person to contract with regard to the tangible personal property, security, service, or anything he may offer.

(b) No person may solicit advertising in the name of a club, association, or organization without the written permission of such club, association, or organization or distribute any publication purporting to represent officially a club, association, or organization without the written authority of or a contract with such club, association, or organization and without listing in such publication the complete name and address of the club, association, or organization endorsing it.

(c) A person's proprietary mark appearing on or in a statement described in Subsection (a) of this section is prima facie evidence that the person disseminated the statement.

(d) A person who violates a provision of Subsection (a) or (b) of this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $200.

Sec. 17.45. DEFINITIONS.

As used in this subchapter:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

(3) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(4) "Consumer" means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.

(5) "Unconscionable action or course of action" means an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(7) "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(8) "Consumer protection division" means the consumer protection division of the attorney general's office.

(9) "Knowingly" means actual awareness, at the time of the act or practice complained of, of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action

brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act, practice, condition, defect, or failure constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(10) "Business consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state.

(11) "Economic damages" means compensatory damages for pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(12) "Residence" means a building:

(A) that is a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system; and

(B) that is occupied or to be occupied as the consumer's residence.

(13) "Intentionally" means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty giving rise to the consumer's claim, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Intention may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.

(14) "Vehicle protection product":

(A) means a product or system, including a written warranty:

(i) that is:

(a) installed on or applied to a vehicle; and

(b) designed to prevent loss of or damage to a vehicle from a specific cause; and

(ii) under which, after installation or application of the product or system described by Subparagraph (i), if loss or damage results from the failure of the product or system to perform as represented in the warranty, the warrantor, to the extent agreed on as part of the warranty, is required to pay expenses to the person in this state who purchases or otherwise possesses the product or system for the loss of or damage to the vehicle; and

(B) may also include identity recovery, as defined by Section 1304.003, Occupations Code, if the product or system described by Paragraph (A) is financed under Chapter 348 or 353, Finance Code.

(15) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to a person in this state who purchases or otherwise possesses a vehicle protection product.

(16) "Loss of or damage to the vehicle," for purposes of Subdivision (14)(A)(ii), may also include unreimbursed incidental expenses that may be incurred by the warrantor, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

(17) "Building materials" includes lumber, windows, and other materials used in the construction or repair of improvements to real property.

Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL.

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

(19) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the

buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20) representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21) promoting a pyramid promotional scheme, as defined by Section 17.461;

(22) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit that the person neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction;

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act;

(27) subject to Section 17.4625, taking advantage of a disaster declared by the governor under Chapter 418, Government Code, or by the president of the United States by:

(A) selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, lodging, building materials, construction tools, or another necessity;

(28) using the translation into a foreign language of a title or other word, including "attorney," "immigration consultant," "immigration expert," "lawyer," "licensed," "notary," and "notary public," in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States;

(29) delivering or distributing a solicitation in connection with a good or service that:

(A) represents that the solicitation is sent on behalf of a governmental entity when it is not; or

(B) resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service;

(30) delivering or distributing a solicitation in connection with a good or service that resembles a check or other negotiable instrument or invoice, unless the portion of the solicitation that

resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type:

"SPECIMEN-NON-NEGOTIABLE";

(31) in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:

(A) making a deceptive representation or designation about the synthetic substance; or

(B) causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested;

(32) a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by Section 38.01, Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured;

(33) owning, operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that:

(A) is not appropriately licensed under Chapter 455, Occupations Code, or is not in compliance with the applicable licensing and other requirements of that chapter; or

(B) is not in compliance with an applicable local ordinance relating to the licensing or regulation of massage establishments; or

(34) a warrantor of a vehicle protection product warranty using, in connection with the product, a name that includes "casualty," "surety," "insurance," "mutual," or any other word descriptive of an insurance business, including property or casualty insurance, or a surety business.

(c)(1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. Sec. 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.

(d) For the purposes of the relief authorized in Subdivision (1) of Subsection (a) of Section 17.50 of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

TITLE 11. PERSONAL IDENTITY INFORMATION
SUBTITLE B. IDENTITY THEFT
CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.002. DEFINITIONS.

(a) In this chapter:

(1) "Personal identifying information" means information that alone or in conjunction with other information identifies an individual, including an individual ’s:

(A) name, social security number, date of birth, or government-issued identification number;

(B) mother ’s maiden name;

(C) unique biometric data, including the individual ’s fingerprint, voice print, and

retina or iris image;

(D) unique electronic identification number, address, or routing code; and

(E) telecommunication access device as defined by Section 32.51, Penal Code.

(2) "Sensitive personal information" means, subject to Subsection (b):

(A) an individual ’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

(i) social security number;

(ii) driver ’s license number or government-issued identification number; or

(iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual ’s financial account; or

(B) information that identifies an individual and relates to:

(i) the physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) payment for the provision of health care to the individual.

(3) "Victim" means a person whose identifying information is used by an unauthorized person.

(b) For purposes of this chapter, the term "sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION.

(a) A business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.

(b) A business shall destroy or arrange for the destruction of customer records containing sensitive personal information within the business ’s custody or control that are not to be retained by the business by:

(1) shredding;

(2) erasing; or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means.

(c) This section does not apply to a financial institution as defined by 15 U.S.C. Section 6809.

(d) As used in this section, "business" includes a nonprofit athletic or sports association.

Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA.

(a) In this section, "breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made without unreasonable delay and in each case not later than the 60th day after the date on which the person determines that the breach occurred, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b-1) If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person described by Subsection (b) to provide notice of a breach of system security, the notice of the breach of system security required under Subsection (b) may be provided under that state ’s law or under Subsection (b).

(c) Any person who maintains computerized data that includes sensitive personal information not owned by the person shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) A person may delay providing notice as required by Subsection (b) or (c) at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law enforcement agency determines that the notification will not compromise the investigation.

(e) A person may give notice as required by Subsection (b) or (c) by providing:

(1) written notice at the last known address of the individual;

(2) electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001; or

(3) notice as provided by Subsection (f).

(f) If the person required to give notice under Subsection (b) or (c) demonstrates that the cost of providing notice would exceed $250,000, the number of affected persons exceeds 500,000, or the person does not have sufficient contact information, the notice may be given by:

(1) electronic mail, if the person has electronic mail addresses for the affected persons;

(2) conspicuous posting of the notice on the person ’s website; or

(3) notice published in or broadcast on major statewide media.

(g) Notwithstanding Subsection (e), a person who maintains the person ’s own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under this section complies with this section if the person notifies affected persons in accordance with that policy.

(h) If a person is required by this section to notify at one time more than 10,000 persons of a breach of system security, the person shall also notify each consumer reporting agency, as defined by 15 U.S.C. Section 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice required by this subsection without unreasonable delay.

(i) A person who is required to disclose or provide notification of a breach of system security under this section shall notify the attorney general of that breach not later than the 60th day after the date on which the person determines that the breach occurred if the breach involves at least 250 residents of this state. The notification under this subsection must include:

(1) a detailed description of the nature and circumstances of the breach or the use of sensitive personal information acquired as a result of the breach; 5

(2) the number of residents of this state affected by the breach at the time of notification;

(3) the measures taken by the person regarding the breach;

(4) any measures the person intends to take regarding the breach after the notification under this subsection; and

(5) information regarding whether law enforcement is engaged in investigating the breach.

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS
CHAPTER 604A. PROHIBITION OF CERTAIN SURCHARGES

Sec. 604A.0021. IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD.

(a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges; or

(2) a private school that accepts a credit card for the payment of fees or other charges, as provided by Section 111.002.

(c) This section does not create a cause of action against an individual for violation of this section.

TEXAS HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES
SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS
CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT

Sec. 432.003. DEFINITIONS.

In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by department rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

(B) has been subjected to prolonged or improper storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in The United States Pharmacopeia and The National Formulary (USP-NF) or the Homoeopathic Pharmacopoeia of the United States (HPUS), or a supplement to those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.

(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

Sec. 432.005. LICENSE REQUIRED.

(a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department.

(c) A salvage operator or salvage broker who is engaging only within the scope of the license issued under this chapter is not required to also be licensed under Chapter 431.

TITLE 1. GENERAL PROVISIONS
CHAPTER 2. NATURE OF PROPERTY

Sec. 2.001. MANUFACTURED HOUSING.

(a) Except as provided by Subsection (b), a manufactured home is personal property.

(b) A manufactured home is real property if:

(1) the statement of ownership and location for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located.

(c) In this section, "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" have the meanings assigned by Chapter 1201, Occupations Code.

(d) to (h) Repealed by Acts 2003, 78th Leg., Ch. 338, Sec. 52(2).

(i) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101, Occupations Code.

TITLE 3. PUBLIC RECORDS
CHAPTER 14. UNIFORM FEDERAL LIEN REGISTRATION ACT

Sec. 14.002. PLACE OF FILING.

(a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the county clerk in the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases, in the office of the county clerk in the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

TITLE 7. PRACTICES AND PROFESSIONS RELATED TO REAL PROPERTY AND HOUSING
SUBTITLE C. REGULATION OF CERTAIN TYPES OF HOUSING AND BUILDINGS
CHAPTER 1201. MANUFACTURED HOUSING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1201.003. DEFINITIONS.

(24) "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale or exchange to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells or exchanges at least two manufactured homes to consumers in a 12-month period.

Sec. 1201.101. LICENSE REQUIRED.

(b) Except as otherwise provided by this chapter, a person may not sell or exchange, or offer to sell or exchange, two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a retailer's license.

Sec. 1201.2055. ELECTION BY OWNER.

(a) In completing an application for the issuance of a statement of ownership, an owner of a manufactured home shall indicate whether the owner elects to treat the home as real property. An owner may elect to treat a manufactured home as real property only if the home is attached to:

(1) real property that is owned by the owner of the home; or

(2) land leased to the owner of the home under a long-term lease, as defined by department rule.

TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 80. MANUFACTURED HOUSING
SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

Rule 80.32. RETAILERS' RESPONSIBILITIES AND REQUIREMENTS.

(t) Auction of Manufactured Housing to Texas Consumers.

(1) A person selling more than one home to one or more consumers through an auction in a twelve (12) month period must be licensed as a retailer, each individual acting as their agent must be licensed as a salesperson, and each specific location at which an auction is held must be licensed and bonded in accordance with the Standards Act.

(2) Acting as an auctioneer may be subject to the Texas Auctioneer Act, Occupations Code, Chapter 1802.

(3) The retailer must notify this Department in writing at least thirty (30) calendar days prior to the auction with such notice to contain the date, time, and physical address and location of a proposed auction or, if they recur on a scheduled basis, of the schedule.

TITLE 22. EXAMINING BOARDS
PART 23. TEXAS REAL ESTATE COMMISSION
CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

Rule 535.5. LICENSE NOT REQUIRED.

(f) Auctioneers are not required to be licensed under the Act when auctioning real property for sale. However, a licensed auctioneer may not show the real property, prepare offers, or negotiate contracts unless the auctioneer is also licensed under the Act.

TITLE 25. HEALTH SERVICES
PART 1. DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 205. PRODUCT SAFETY
SUBCHAPTER A. BEDDING RULES

Rule 205.8. GERMICIDAL TREATMENT REQUIREMENTS; METHODS.

(a) General Requirements.

(1) Secondhand bedding articles.

(A) Secondhand bedding articles shall be cleaned and germicidally treated by a method approved by the department in subsection (b) of this section before they may be sold, leased or rented to consumers.

(B) Bedding articles manufactured, repaired, or renovated in whole or in part from secondhand or recycled materials shall be germicidally treated by a method approved by the department in subsection (b) of this section before they may be sold, leased or rented to consumers.

(C) Upholstered sofa beds and studio couches are subject to the requirements set forth in paragraph (1)(A) and (B) of this subsection.

(2) Renovated bedding articles.

(A) Secondhand or recycled materials shall be germicidally treated by a

method approved by the department in subsection (b) of this section before they may be used in the manufacture, repair or renovation of bedding articles.

(B) Materials that are filthy, stained, oily, have obnoxious odors, harbor insects or pathogenic organisms, were obtained from dumps or junkyards or have been exposed to the elements shall not be used in the manufacture, repair or renovation of bedding articles.

(C) The outer covers on secondhand mattresses and box springs to be renovated or rebuilt for resale shall be removed to expose the concealed filling materials. Materials described in paragraph (2)(B) of this subsection shall be removed and discarded. When the chemical method of germicidal treatment is used, the mattresses and box springs shall be treated prior to the installation of new covers. Secondhand covers shall not be reused regardless of the germicidal treatment method.

(b) Treatment methods.

(1) Chemical spray.

(A) Only those products specifically approved by the department may be used as a germicidal treatment method.

(B) Mechanical, compressed air, hand pump, or electric sprayers must be used and they must be of the continuous spray type. No intermittant spray devices are allowed.

(C) Chemicals must be in liquid form. Aerosol sprays shall not be used.

(D) Liquid sprays must include a simple but positive means of detection or verification by means of an ultra-violet lamp unit.

(E) Liquid sprays requiring premixing or dilution shall not be approved.

(F) Spray area must be in such a location as to be protected from wind.

(G) Manufacturers specifications such as amount of coverage, operator safety precautions, and other warning labels must be followed.

(2) Dry heat.

(A) A minimum temperature of 230 degrees Fahrenheit for a period of one hour 15 minutes, within a closed chamber is required for proper germicidal treatment. The minimum temperature may be reduced to 205 degrees Fahrenheit for a period of one hour and 30 minutes for foam products which may be damaged at 230 degrees Fahrenheit.

(B) The dry heat chamber shall be equipped with a recording clock to accurately record the time and temperature. The clock shall be attached on the outside of the chamber and the heat bulb sending unit must be installed within the chamber at the furtherest point practical from the entry of the heat.

(C) The chamber and automatic circulating heat devices shall maintain equal and uniform temperatures in all sections of the chamber.

(D) All articles of bedding shall be spaced within the chamber to allow not less than four inches on all sides of each article for full circulation of heat or air.

(3) Steam.

(A) Treatment by the steam method shall consist of steam under pressure of 15 pounds per square inch maintained for 30 minutes or a pressure of 20 pounds per square inch maintained for 20 minutes.

(B) An alternate method may consist of two applications of streaming steam, maintained for a period of one hour each, to be applied at intervals of not less than six nor more than 24 hours.

(4) Commercial laundry method. Pillows, quilts, quilted spreads, comforters, pads, sleeping bags, and other similar items will be considered as having been germicidally treated when the filling materials and covering material or ticking are kept intact without opening, and cleaned by a commercial laundry method.

(5) Other methods. Any other method of germicidal treatment may be used

provided it has first been approved in writing by the department.

(6) Records. All records required by the Act and regulations shall be kept as part of the operator's records for a period of not less than two years. The records shall be available to the department on request.

TITLE 31. NATURAL RESOURCES AND CONSERVATION
PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT
CHAPTER 65. WILDLIFE
SUBCHAPTER G. THREATENED AND ENDANGERED NONGAME SPECIES

Rule 65.171. GENERAL PROVISIONS.

(a) The provisions of this subchapter apply to any species of wildlife listed in this state as threatened or endangered, living or dead, including parts.

(b) Except as otherwise provided in this subchapter or Parks and Wildlife Code, Chapters 67 or 68, no person may:

(1) take, possess, propagate, transport, export, sell or offer for sale, or ship any species of fish or wildlife listed by the department as endangered; or

(2) take, possess, propagate, transport, import, export, sell, or offer for sale any species of fish or wildlife listed in this subchapter as threatened.

(3) sell or propagate for sale any species of fish or wildlife listed by the department as endangered, unless that person also possesses an endangered species propagation permit.

(c) Any person may possess, transport, import, export, sell, or offer for sale goods made from fish or wildlife listed in this subchapter as threatened, provided the person possesses:

(1) a copy of an out-of-state permit authorizing the possession of the specimens in the state of origin, valid at the time the specimen enters Texas;

(2) a bill of sale identifying the source of the specimen; or

(3) a notarized affidavit stating the source of the specimen and that the specimen(s) was legally obtained.

(d) Any person may possess or transport lawfully obtained live, mounted, or preserved specimens of threatened or endangered species, including specimens acquired in another state, provided the person complies with the provisions of subsection (c)(1)-(3) of this section.

SUBCHAPTER P. ALLIGATOR PROCLAMATION

Rule 65.359. POSSESSION.

(a) A consumer may possess processed alligators and processed alligator meat products without permit or documentation requirements.

(b) Alligator eggs possessed under a farming permit must be at a farm facility.

(c) Except as provided in subsection (a) of this section, all alligators or alligator parts possessed, sold, purchased, exported, or imported shall be accompanied by evidence of lawful take and/or possession.

SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

Rule 65.377. SALE OR PURCHASE OF FUR-BEARING ANIMALS.

(a) Sale of fur-bearing animals, their carcasses and pelts, and finished products.

(1) No person other than a licensed fur-bearing animal propagator may sell a live

fur-bearing animal.

(2) No person other than a licensed trapper or wholesale fur dealer may sell the carcass or pelt of a fur-bearing animal.

(3) Finished products may be sold by anyone.

(4) A trapper may possess and sell the carcass or pelt of a fur-bearing animal lawfully taken during an open commercial trapping season at any time.

(5) A trapper may sell the carcass or pelt of a fur-bearing animal only to a wholesale fur dealer or purchaser outside of Texas.

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

Rule 3.281. RECORDS REQUIRED; INFORMATION REQUIRED.

(e) Retention. A person who is required to keep records under subsection (a) of this section must keep those records for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period. A person must keep exemption and resale certificates for a minimum of four years following the completion of the last sale that is covered by the certificate.

Rule 3.285. RESALE CERTIFICATE; SALES FOR RESALE.

(c) Issuance and acceptance of resale certificates.

(1) A sale for resale as defined in subsection (b) of this section is not taxable.

(2) Who may issue a resale certificate.

(A) In general, a purchaser who holds a Texas sales and use tax permit may issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to resell, lease, rent, or transfer as an integral part of a taxable service in the normal course of business. A purchaser may also issue a resale certificate instead of paying tax at the time of purchase of a taxable item that the purchaser intends to maintain in a valid tax-free inventory, if the purchaser does not know at the time of purchase whether the item will be resold or used in the performance of a service. The purchaser must collect, report, and remit tax to the comptroller as required by §3.286 of this title when the purchaser sells, leases, or rents taxable items.

Rule 3.286. SELLER'S AND PURCHASER'S RESPONSIBILITIES.

(b) Who must have a sales and use tax permit.

(1) Sellers. Except as provided in paragraph (2) of this subsection, each seller who is engaged in business in this state, including itinerant vendors, persons who own or operate a kiosk, and sellers operating temporarily in this state, must apply to the comptroller and obtain a sales and use tax permit for each place of business of the seller operated in this state and a single permit for its out-of-state places of business.

(d) Collecting sales and use tax due.

(1) Bracket system.

(A) Each seller must collect sales or use tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053 (Sales Tax Brackets). The practice of rounding off the amount of sales or use tax that is due on the sale of a taxable item is prohibited. Copies

of the bracket system should be displayed in each place of business of the seller so both the seller and the purchaser may easily use them.

(B) The sales and use tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for $.07, then the seller must collect the tax on the total sum of $.14. Sales and use tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410 (Method of Reporting Sales Tax; General Rule). When sales and use tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the sales and use tax due. Conversely, when the sales and use tax collected under the bracket system is less than the sales and use tax due on the seller's total receipts, the seller is required to remit sales and use tax on the total receipts even though the seller did not collect sales and use tax from the purchasers.

(g) Reporting periods.

(1) Quarterly filers. Permit holders who have less than $1,500 in state sales and use tax per quarter to report may file sales and use tax returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.

(2) Yearly filers. Permit holders who have less than $1,000 in state sales and use tax to report during a calendar year may file yearly sales and use tax returns upon authorization from the comptroller.

(A) Authorization to file sales and use tax returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file sales and use tax returns on a yearly basis will be denied if a permit holder's liability exceeded $1,000 in the prior calendar year.

(C) A permit holder who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a permit holder's state sales and use tax liability is greater than $1,000 during a calendar year. The permit holder must file a sales and use tax return for that month or quarter, depending on the amount, in which the sales and use tax payment or liability is greater than $1,000. On that return, the permit holder must report all sales and use taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, thereafter for as long as the yearly sales and use tax liability is greater than $1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly sales and use tax returns.

(F) Yearly filers must report on a calendar year basis. The sales and use tax return and payment are due on or before January 20 of the next calendar year.

(3) Monthly filers. Permit holders who have $1,500 or more in state sales and use tax per quarter to report must file monthly sales and use tax returns except for permit holders who prepay the sales and use tax as provided in subsection (h) of this section.

(h) Discounts; prepayments; penalties and interest relating to filing sales and use tax returns.

(1) Discounts. Unless otherwise provided by this section, each permit holder may claim a discount for timely filing a sales and use tax return and paying the taxes due as reimbursement for the expense of collecting and remitting the sales and use tax. The discount is equal to 0.5% of the amount of sales and use tax due and may be claimed on the return for each reporting period and is computed on the amount timely reported and paid with that return.

(2) Prepayments. Prepayments may be made by permit holders who file monthly or quarterly sales and use tax returns. The amount of the prepayment must be a reasonable estimate of the state and local sales and use tax liability for the entire reporting period. "Reasonable estimate"

means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(m) Refusal to issue sales and use tax permit. The comptroller is required by Tax Code, §111.0046 (Permit or License), to refuse to issue any sales and use tax permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(n) Cancellation of sales and use tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales and use tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the sales and use tax permit, and the comptroller may cancel the sales and use tax permit. "No business activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a sales and use tax permit is cancelled, the person may reapply and obtain a new sales and use tax permit upon request, provided the issuance is not prohibited by subsection (m) of this section, or by Tax Code, §111.0046.

Rule 3.287. EXEMPTION CERTIFICATES.

(d) Acceptance of exemption certificate.

(1) All gross receipts of a seller are presumed subject to sales or use tax unless a valid and properly completed resale or exemption certificate is accepted by the seller. Resale certificates are addressed in detail in §3.285 of this title.

Rule 3.296. AGRICULTURE, ANIMAL LIFE, FEED, SEED, PLANTS, AND FERTILIZER.

(b) Sales tax is not due on machinery and equipment exclusively used in, and pollution equipment required as a result of, the processing, packing, or marketing of agricultural products by an original producer at a location operated by the original producer exclusively for processing, packing, or marketing the original producer's own products.

(6) Machinery and equipment exclusively used in the processing, packing, or marketing of agricultural products by an agricultural cooperative organized under the Agriculture Code, Chapter 52, are not exempt unless the comptroller determines that:

(A) the cooperative itself is the original producer of all the agricultural products being processed, packed, or marketed; and

(B) the processing, packing, or marketing is being accomplished at a location operated by the cooperative.

(g) The terms machinery or equipment include:

(1) expendable supplies, such as hand tools, baling wire and binders twine;

(2) lubricants for farm machinery and for motor vehicles not licensed for highway use;

(3) nuts, bolts, washers, and other hardware. It also includes materials used on or in buildings, structures, or structural components that are classified as machinery or equipment;

(4) repair or replacement parts used exclusively on farm or ranch machinery or equipment. This includes tractor tires, tires used on motor vehicles not licensed for highway use, and tires specifically designated by the manufacturer for farm use or off-highway use only;

(5) machinery and equipment used exclusively to maintain equipment that qualifies for exemption under this section;

(6) those items specifically designed to be assembled into a machine, such as parts of a pumping system or portable irrigation systems;

(7) tangible personal property sold for use as a component of an underground irrigation system;

(8) fenceposts, cattleguards, gates, and chutes. However, fenceposts, gates and cattleguards used to enclose private driveways, home lawns, gardens, pools, etc., do not qualify for exemption from tax. These items purchased by persons operating commercial nurseries and greenhouses and similar commercial operations for the purpose of preventing trespassing by the public do not qualify for exemption from tax; and

(9) the following items and the materials used to build, construct, or fabricate these items (these items are classified as equipment and are therefore exempt), provided they meet the qualifications set out in this section and have not been previously excluded:

(A) fences, pens, gates, cattleguards, and chutes used in connection with raising livestock or production of agricultural products;

(B) storage facilities specifically designed for and that can be used only to store bulk fungible commodities regardless of whether the facilities are of a portable or fixed nature. Typical facilities on farms or ranches include petroleum products storage tanks, grain storage bins, refrigerated storage structures for unprocessed fruit, silos, and vehicle-mounted fertilizer spreaders or feed mills (not licensed for highway use). General purpose facilities that are used to store bulk fungible commodities, farm produce or equipment do not qualify for exemption from tax. Only those facilities that cannot be used for any purpose other than the storage of fungible goods qualify as farm equipment;

(C) a building or structure that is essentially an item of equipment or machinery necessary for agricultural production if it is specifically designed for such use and cannot be economically used for any other purpose. For example, automated laying houses, farrowing houses, and commercial greenhouses.

Rule 3.305. CRIMINAL OFFENSES AND PENALITES.

(b) Criminal offenses provided in Tax Code, Chapter 151, include, but are not limited to, the following:

(1) A seller commits an offense if the seller directly or indirectly advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items. This offense is a misdemeanor punishable by a fine of not more than $500 for each occurrence.

Rule 3.311. AUCTIONEERS, BROKERS, AND FACTORS.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context indicates otherwise.

(1) Auction or auctioning--The sale by an auctioneer of tangible personal property by competitive bid.

(2) Auctioneer--A person who owns tangible personal property or to whom tangible personal property has been consigned and who offers the tangible personal property for sale at auction.

(b) Responsibility of an auctioneer.

(1) Sales tax is due from the purchaser on the sales price of taxable items sold at auction.

(2) An auctioneer is responsible for collecting and remitting to the comptroller any tax due on the sale of taxable items sold at auction by the auctioneer.

(3) An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax.

(4) An auctioneer should not collect tax on the sale of items that are exempt

from sales tax such as motor vehicles, real property, or livestock.

(5) Sales tax is not due on a sale of a taxable item when the owner of the item subsequently reclaims the property at the auction.

(c) Letter of waiver. A person, who is seeking an auctioneer's license and requires a letter of waiver as proof no sales tax permit is required, may request a letter of waiver from the comptroller.

(1) A request for a letter of waiver from the comptroller as proof no sales tax permit is required must be in writing and must detail the basis or reason no sales tax permit is required.

(2) If the items being auctioned are exempt from sales tax or if the auctioneer is not considered a seller, a letter of waiver will be issued.

(3) A letter of waiver is valid only so long as there is no change in the fact situation as originally presented to the comptroller.

Rule 3.358. MAQUILADORAS.

(a) Maquiladora enterprise. Maquiladora enterprise means a business entity chartered by the government of the United Mexican States and authorized by that government to make duty-free imports of raw materials, component parts, or other property into Mexico to be used in manufacturing, processing, or assembling items by the business entity in Mexico primarily for export from Mexico.

(b) Maquiladora permits.

(1) Any maquiladora enterprise wishing to make tax-free purchases in Texas for export to Mexico may apply to the comptroller for a maquiladora export permit.

(2) The applicant must provide copies of their maquiladora authorization form issued by the Mexican Secretaria De Comercio Y Fomento Industrial showing the number by which they are listed in the registry of in-bond companies. They must also post any bond or security the comptroller may require.

(3) When the application is complete, the comptroller will issue at no charge a numbered maquiladora export permit which will be valid until canceled by either the maquiladora enterprise or the comptroller.

TEXAS AGRICULTURAL SALES TAX EXEMPTIONS

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

ALWAYS EXEMPT

These items are always exempt, and do not require an exemption certificate or an Ag/Timber Registration Number.

- Horses, mules and work animals commonly used in agricultural production;
- Animal life, the products of which ordinarily constitute food for human consumption, such as cattle, goats, sheep, chickens, turkeys and hogs;
- Game animals, as described by Parks and Wildlife Code Section 63.001, Game Animals;
- Exotic animals, as defined by Property Tax Code Section 23.51, Definitions;
- Feed, such as oats, hay, chicken scratch, wild bird seed and deer corn for livestock and wild game (pet food is not exempt); and
- Seeds and annual plants the products of which are commonly recognized as food for humans or animals or that yield products that are sold in the regular course of business.

EXEMPT

These items are exempt from sales tax when used exclusively on a farm or ranch to produce agricultural products for sale and purchased by a person with a current Ag/Timber Number.

Air tanks

Augers

Bale transportation equipment

Baler twine

Baler wrap

Balers

Binders

Branding irons

Brush hogs

Bulk milk coolers

Bulk milk tanks

Calf weaners and feeders

Cattle currying and oiling machines

Cattle feeders

Chain saws used for clearing fence lines or pruning orchards

Choppers

Combines

Conveyors

Corn pickers

Corral panels

Cotton pickers, strippers

Crawlers – tractors

Crushers

Cultipackers

Discs

Drags

Dryers

Dusters

Egg handling equipment

Ensilage cutters

Farm machinery and repair or replacement parts

Farm tractors

Farm wagons

Farrowing houses (portable and crates)

Feed carts

Feed grinders

Feeders

Fertilizer

Fertilizer distributors

Floats for water troughs

Foggers

Forage boxes

Forage harvesters

Fruit graters

Fruit harvesters

Grain binders

Grain bins

Grain drills

Grain handling equipment

Greases, lubricants and oils for qualifying farm machinery and equipment

Harrows

Head gates

Hoists

Husking machines

Hydraulic fluid

Hydro-coolers

Implements of husbandry

Incubators

List continued on next page. >

TEXAS AGRICULTURAL SALES TAX EXEMPTIONS

> List continued from previous page (Exempt List).

Irrigation equipment

Manure handling equipment

Manure spreaders

Milking equipment

Mowers (hay and rotary blade)

Pesticides

Pickers

Planters

Poultry feeders

Poultry house equipment

Pruning equipment

Rollbar equipment

Rollers

Root vegetable harvesters

Rotary hoes

Salt stands

Seed cleaners

Shellers

Silo unloaders

Soilmovers used to grade farmland

Sorters

Sowers

Sprayers

Spreaders

Squeeze chutes

Stalls

Stanchions

Subsoilers

Telecommunications services used to navigate farm machinery and equipment

Threshing machines

Tillers

Tires for exempt equipment

Troughs, feed and water

Vacuum coolers

Vegetable graders

Vegetable washers

Vegetable waxers

TAXABLE

These items DO NOT qualify for sales and use tax exemption for agricultural production.

- Automotive parts, such as tires, for vehicles licensed for highway use, even if the vehicle has farm plates
- Clothing, including work clothing, safety apparel and shoes
- Computers and computer software used for any purposes other than agricultural production
- Furniture, home furnishings and housewares
- Golf carts, dirt bikes, dune buggies and go-carts
- Guns, ammunition, traps and similar items
- Materials used to construct roads or any structures used for shelter, housing, storage or work space (for example, houses, offices, barns, storage facilities, warehouses, garages, and stores)
- Motor vehicles and trailers*
- Pet food
- Taxable services such as nonresidential real property repairs or remodeling, security services and waste removal

*See comptroller.texas.gov/taxes/ag-timber/.

FOR MORE INFORMATION, VISIT OUR WEBSITE comptroller.texas.gov/taxes/ag-timber/ or call 800-252-5555.

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TEXAS ALCOHOLIC BEVERAGE COMMISSION
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.04. DEFINITIONS.

(10) "Commission" means the Texas Alcoholic Beverage Commission.

TITLE 2. ADMINISTRATION OF CODE
CHAPTER 6. ACTIVITIES SUBJECT TO REGULATION

Sec. 6.01. RIGHTS AND PRIVILEGES; REVOCATION.

(a) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process alcoholic beverages or possess equipment or material designed for or capable of use for manufacturing alcoholic beverages, if the right or privilege of doing so is granted by this code and the person has first obtained a license or permit of the proper type as required by this code.

(b) A license or permit issued under this code is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.

TITLE 3. LICENSES AND PERMITS
SUBTITLE A. PERMITS
CHAPTER 53. TEMPORARY AUCTION PERMIT

Sec. 53.001. AUTHORIZED ACTIVITIES.

The holder of a temporary auction permit may auction alcoholic beverages for consumption off premises to raise money to support the stated purpose of the permit holder.

Sec. 53.002. FEE.

(a) The state fee for a temporary auction permit is $25.

(b) A local fee may not be charged for the application for or the issuance of a temporary auction permit.

(c) The commission may not impose a surcharge for a temporary auction permit.

Sec. 53.003. DURATION OF PERMIT.

A temporary auction permit may be issued for a period of not more than five days.

Sec. 53.004. PERMIT.

The commission may issue a temporary auction permit only to:

(1) an organization that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(2) a person or group of persons who are subject to recordkeeping requirements under Chapter 254, Election Code.

Sec. 53.005. AUCTION LOCATION.

(a) The holder of a temporary auction permit may conduct an auction in any area where the sale of the type of alcoholic beverage to be auctioned is authorized by a local option election.

(b) The holder of a temporary auction permit may conduct an auction at a premises of another permit or license holder if:

(1) the alcoholic beverages to be auctioned are kept separate from the alcoholic beverages sold, stored, or served at the premises; and

(2) the alcoholic beverages subject to the auction, whether sold or unsold, are removed from the premises immediately following the auction.

Sec. 53.006. AUCTION NOTICE.

Before an auction is held, the holder of a temporary auction permit shall provide to the branch office of the commission located closest to the auction site written notice of:

(1) the date, time, and place of the auction; and

(2) the inventory of the alcoholic beverages to be auctioned.

Sec. 53.007. DISPOSITION OF PROCEEDS.

The proceeds from an auction authorized by this chapter shall be deposited to the account of the holder of a temporary auction permit.

Sec. 53.008. PROHIBITED ACTIVITIES.

The holder of a temporary charitable auction permit may not:

(1) auction distilled spirits, wine, ale, or malt liquor that has not been donated to the organization;

(2) auction alcoholic beverages if any taxes are owed on the beverages; and

(3) pay a commission or promotional allowance to a person to:

(A) arrange or conduct an auction under this chapter; or

(B) arrange the donation of alcoholic beverages to be auctioned by the organization.

Sec. 53.009. RULES.

(a) The commission shall adopt rules governing the issuance and use of a temporary auction permit.

(b) The commission shall adopt rules establishing penalties for the violation of rules adopted under this chapter. A penalty established by the commission under this subsection may not exceed a penalty that the commission may impose on the holder of another temporary license or permit.

TITLE 4. REGULATORY AND PENAL PROVISIONS
CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS
SUBCHAPTER A. SALVAGED AND INSURED LOSSES

Sec. 109.01. SALE OF SALVAGED OR INSURED LOSS.

If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

TEXAS AGRICULTURE CODE

TITLE 6. PRODUCTION, PROCESSING, AND SALE OF ANIMAL PRODUCTS
SUBTITLE B. LIVESTOCK
CHAPTER 146. SALE AND SHIPMENT OF LIVESTOCK
SUBCHAPTER A. GENERAL PROVISIONS

Sec.146.001. BILL OF SALE OR TRANSFER REQUIRED.

(a) If a person in this state sells or transfers a horse, mule, jack, jennet, ox, or head of cattle, the actual delivery of the animal must be accompanied by a written transfer to the purchaser from the vendor. The written transfer must give the marks and brands of the animal and, if more than one animal is transferred, must give the number transferred.

(b) On the trial of the right of property in an animal sold or transferred under Subsection (a) of this section, the possession of the animal without the written transfer is presumed to be illegal.

(c) A person may dispose of livestock on the range by sale and delivery of the marks and brands, but in order to acquire title the purchaser must have the bill of sale recorded in the county clerk ’s office. The county clerk shall record the transfer in records maintained for that purpose and shall note the transfer on the records of marks and brands in the name of the purchaser.

TEXAS TRANSPORTATION CODE

TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE A. CERTIFICATES OF TITLE AND REGISTRATION OF VEHICLES
CHAPTER 503. DEALER’S AND MANUFACTURER’S VEHICLE LICENSE PLATES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.024. EXCLUSIONS FOR DEALER.

(a) A person is not required to obtain a dealer general distinguishing number if the person:

(1) sells or offers to sell during a calendar year fewer than five vehicles of the same type that are owned and registered in that person's name; or

(2) is a federal, state, or local governmental agency.

(b) For the purposes of Section 503.021, a person is not engaging in business as a dealer by:

(1) selling or offering to sell, if the sale or offer is not made to avoid a requirement of this chapter, a vehicle the person acquired for personal or business use to:

(A) a person other than a retail buyer if not sold or offered through a licensed auctioneer; or

(B) any person if the sale or offer is made through a licensed auctioneer;

(2) selling, in a manner provided by law for the forced sale of vehicles, a vehicle in which the person holds a security interest;

(3) acting under a court order as a receiver, trustee, administrator, executor, guardian, or other appointed person;

(4) selling a vehicle the person acquired from the vehicle's owner as a result of paying an insurance claim if the person is an insurance company;

(5) selling an antique passenger car or truck that is at least 25 years of age; or

(6) selling a special interest vehicle that is at least 12 years of age if the person is a collector.

(c) For the purposes of Section 503.021, a domiciliary of another state who holds a dealer license and bond, if applicable, issued by the other state is not engaging in business as a dealer by:

(1) buying a vehicle from, selling a vehicle to, or exchanging a vehicle with a person who:

(A) holds a general distinguishing number issued by the department, if the transaction is not intended to avoid a requirement of this chapter; or

(B) is a domiciliary of another state who holds a dealer license and bond, if applicable, issued by the other state and the transaction is not intended to avoid a requirement of this chapter; or

(2) buying, selling, including by consignment, or exchanging at a public auction:

(A) an antique vehicle that is at least 25 years of age; or

(B) a special interest vehicle that:

(i) is at least 12 years of age; or

(ii) has been the subject of a retail sale.

(d) For the purposes of Section 503.021, a licensed auctioneer is not engaging in business as a dealer by, as a bid caller, selling or offering to sell property, including a business that holds the title to any number of vehicles, to the highest bidder at a bona fide auction if:

(1) legal or equitable title does not pass to the auctioneer;

(2) the auction is not held to avoid a requirement of this chapter; and

(3) for an auction of vehicles owned legally or equitably by a person who holds a general distinguishing number, the auction is conducted at the location for which the general distinguishing number was issued.

(e) In this section, "special interest vehicle" has the meaning assigned by Section 683.077(b).

ATF Rule 96-2 [Status of ruling: Active]

An association of auctioneers has asked the Bureau of Alcohol, Tobacco and Firearms (ATF) for a ruling concerning the auctions conducted by their members and whether the sale of firearms at such auctions requires a Federal firearms license as a dealer in firearms.

The auctioneers' association stated that their members generally conduct two types of auctions: estate-type auctions and consignment auctions. In estate-type auctions, articles to be auctioned, including firearms, are sold by the executor of the estate of an individual. In these cases the firearms belong to and are possessed by the executor. The auctioneer acts as an agent of the executor and assists the executor in finding buyers for the firearms. The firearms are possessed by the estate and their sale to third parties is controlled by the estate. The auctioneer is paid a commission on the sale of each firearm by the estate at the conclusion of the auction.

The association states that, in consignment-type auctions, an auctioneer may take possession of firearms in advance of the auction. The firearms are inventoried, evaluated, and tagged for identification. The firearms belong to individuals or businesses who have entered into a consignment agreement with the auctioneer giving the auctioneer authority to sell the firearms. The agreement states that the auctioneer has the exclusive right to sell the items listed on the contract at a location, time, and date to be selected by the auctioneer. The agreement also provides for the payment of a commission by the owner to the auctioneer. The consignment-type auctions generally involve accepting firearms for auction from more than one owner. Also, these auctions are held on a regular basis, for example, every 1-2 months.

Section 923(a), Title 18, U.S.C., provides that no person shall engage in the business of dealing in firearms until he has filed an application and received a license to do so. Section 922(a)(1), Title 18, U.S.C., provides that it is unlawful for any person, other than a licensee, to engage in the business of dealing in firearms. Licensees generally may not conduct business away from their licensed premises.

The term "dealer" is defined at 18 U.S.C. § 921(a)(11)(A) to include any person engaged in the business of selling firearms at wholesale or retail. The term "engaged in the business" as applied to a dealer in firearms means a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A dealer can be "engaged in the business" without taking title to the firearms that are sold. However, the term does not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms. 18 U.S.C. § 921(a)(21)(C).

In the case of estate-type auctions, the auctioneer acts as an agent of the executor and assists the executor in finding buyers for the estate's firearms. The firearms are possessed by the estate, and the sales of firearms are made by the estate. In these cases, the auctioneer does not meet the definition of "engaging in the business" as a dealer in firearms and would not require a license. An auctioneer engaged in estate-type auctions, whether licensed or not, may perform this function, including delivery of the firearms, away from the business premises.

In the case of consignment-type auctions held on a regular basis, for example, every 1-2 months, where persons consign their firearms to the auctioneer for sale pursuant to an agreement as described above, the auctioneer would be "engaging in the business" and would require a license. The auctioneer would

be disposing of firearms as a regular course of trade or business within the definition of a “dealer” under § 921(a)(11)(A) and must comply with the licensing requirements of the law.

As previously stated, licensed auctioneers generally must engage in the business from their licensed premises. However, an auctioneer may conduct an auction at a location other than his licensed premises by displaying the firearms at the auction site, agreeing to the terms of sale of the firearms, then returning the firearms to the licensed premises for delivery to the purchaser.

Held: Persons who conduct estate-type auctions at which the auctioneer assists the estate in selling the estate’s firearms, and the firearms are possessed and transferred by the estate, do not require a Federal firearms license.

Held further: Persons who regularly conduct consignment-type auctions, for example, held every 1-2 months, where the auctioneer takes possession of the firearms pursuant to a consignment contract giving the auctioneer the exclusive right and authority to sell the firearms at a location, time and date to be selected by the auctioneer and providing for a commission to be paid upon sale are required to obtain a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

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TITLE 11. BANKRUPTCY
CHAPTER 7. LIQUIDATION
SUBCHAPTER II. COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

Sec. 721. Authorization to Operate Business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 6005. Appraisers and Auctioneers

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.
(As amended Apr. 30, 1991, eff. Aug. 1, 1991.)

UCC - "NOTICE FILING" - SECURED TRANSACTIONS

The Uniform Commercial Code Section (UCC) is the central filing office for certain financing statements and other documents provided for under the Uniform Commercial Code since 1966.

Excerpt from the Uniform Commercial Code:

> *The Uniform Commercial Code adopts the "notice filing" approach, under which an abbreviated notice is filed with the appropriate filing officer evidencing that a debtor and secured party intend to engage in a secured transaction using specified collateral as security. The actual security agreement may even be executed later. The Code became effective at midnight on June 30, 1966, and applies to transactions entered into and events occurring after that date.*

Sec. 923. Licensing.

(a) No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until he has filed an application with and received a license to do so from the Attorney General. The application shall be in such form and contain only that information necessary to determine eligibility for licensing as the Attorney General shall by regulation prescribe and shall include a photograph and fingerprints of the applicant. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place in which the applicant is to do business, as follows:

(3) If the applicant is a dealer—

(A) in destructive devices or ammunition for destructive devices, a fee of $1,000 per year; or

(B) who is not a dealer in destructive devices, a fee of $200 for 3 years, except that the fee for renewal of a valid license shall be $90 for 3 years.