

No. 2008-89

AN ACT

SB 908

Amending the act of December 22, 1983 (P.L.327, No.85), entitled "An act imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction houses and auction companies; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals," further providing for auctioneer and apprentice auctioneer licenses.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title and section 1 of the act of December 22, 1983 (P.L.327, No.85), known as the Auctioneer and Auction Licensing Act, are amended to read:

AN ACT

Imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction houses **[and]**, auction companies **and trading assistants**; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals.

Section 1. Short title.

This act shall be known and may be cited as the Auctioneer **[and Auction]** Licensing **and Trading Assistant Registration Act**.

Section 2. The definitions of "auction" or "sale at auction" and "person" in section 2 of the act are amended and the section is amended by adding definitions to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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"Auction" or "sale at auction." The offer to sell property by an auctioneer or apprentice auctioneer to the members of an audience congregated for the purpose of making bids for the purchase of the property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer. *The term "auction" or "sale at auction" excludes any sale conducted through an online Internet bidding platform.*

\* \* \*

*"Online Internet bidding platform." Hardware or software architecture that provides or enables computer access by multiple users to an interactive computer server for the purpose of allowing users to offer property for sale and that does not examine, set the price or prepare the description of the property to be offered.*

“Person.” An individual, partnership, association [or], corporation, *limited liability company or other entity.*

\* \* \*

“Registrant.” *A person registered under this act as a trading assistant.*

“Trading assistant.” *An individual who, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of accepting personal property to sell on behalf of another through an online Internet bidding platform.*

Section 3. Section 3(a) of the act is amended to read:

Section 3. Auctioneer and apprentice auctioneer licenses.

(a) Requirement for license.—**[It] Notwithstanding section 10.1, it is unlawful for any person to engage in or carry on the profession of auctioneer, to conduct a sale at auction, to hold himself out as an auctioneer or as an apprentice auctioneer or to offer to conduct sales at auction in this Commonwealth without first obtaining from the board a license as an auctioneer or apprentice auctioneer. Any member, officer or employee of a partnership, association or corporation who attempts to sell at auction or who is actively engaged in the auction profession must have a license as an auctioneer or apprentice auctioneer.**

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Section 4. Section 5 of the act is amended by adding a subsection to read:

Section 5. Applications for initial and renewal licenses.

\* \* \*

(f) *Internet sales.*—*An applicant or licensee renewing a license under this section must indicate to the board whether or not sales will be conducted via an online Internet bidding platform.*

Section 5. The act is amended by adding a section to read:

**Section 10.1. Trading assistant registration.**

(a) *Requirement for registration.*—*It shall be unlawful for any individual to act as a trading assistant for a sale conducted by competitive bidding without either first registering with or obtaining licensure from the board. Registration is required on a biennial basis.*

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

(1) *Name of the applicant, the business and the physical location where the business will be conducted.*

(2) *Date the applicant will begin accepting goods for sale through an online Internet bidding platform.*

(3) *Pennsylvania tax identification number.*

(4) *E-mail address.*

(c) *Fee.*—*A registration fee of \$100 shall be included with each application for registration.*

Section 6. Sections 13, 14, 15, 16, 17, 21, 26, 27, 28, 29 and 31(a) of the act are amended to read:

Section 13. Licensee *and registrant* to furnish bond.

(a) General rule.—An auctioneer, apprentice auctioneer, auction company or auction house license *or trading assistant registration* shall not be granted or issued to any **[individual, partnership, association or corporation] person** until the applicant has filed with the board an approved bond payable to the Commonwealth in the amount of \$5,000. The bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business in this Commonwealth. The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against a licensee *or registrant* under this act.

(b) Conditions of bond.—The condition of the bond shall be that the licensee *or registrant* will comply with and abide by the provisions of this act and will pay to the Commonwealth, the board or any person or persons any and all money that may come due the Commonwealth, the board or the person or persons from a licensee *or registrant* under and by virtue of this act.

(c) Action on bond.—If any person is aggrieved by the misconduct of any licensee *or registrant* and recovers judgment against the licensee *or registrant* therefor, the person may, on any execution issued under the judgment, maintain an action upon the bond of the licensee *or registrant* in any court having jurisdiction of the amount claimed.

Section 14. No other license *or registration* required.

No political subdivision of this Commonwealth shall have the power or authority to levy or collect any license tax or fee which is either a regulatory or a revenue measure upon or from any auctioneer or apprentice auctioneer **[licensed] or trading assistant licensed or registered** under this act nor to require any auctioneer or apprentice auctioneer to be licensed by the political subdivision in order to carry on the business of auctioneer or to conduct a sale at auction.

Section 15. List of licensees[.] *and registrants*.

The board shall maintain a current list of **[the individuals, partnerships, associations and corporations] any person** licensed by *or registered with* the board. The list shall *be posted on the department's Internet website and [be open to public inspection during the business hours of the department. Copies of the list are to be available to the public at cost.] shall be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.*

Section 16. Records of sales.

(a) General rule.—Every auctioneer *or trading assistant*, whether acting in his own behalf or as the officer, agent or representative of another, after the receipt or acceptance by him of any property for sale at auction *or sale through an online Internet bidding platform*, shall maintain a written record which shall contain the following information:

(1) The name and address of the person who employed him to conduct the **[sale at auction] transaction** and of the owner, the owner's authorized agent or consignor of the property to be sold **[at auction]**.

(2) A copy of the written contract authorizing the **[sale at auction] transaction** containing the terms and conditions of the **[auctioneer's employment] transaction** or a copy of the receiving invoice.

(3) A written record of the **[sale at auction] transaction**.

(b) Inspection of records.—The records referred to in subsection (a) shall be open at all reasonable times for inspection by the board or any person who is authorized in writing for that purpose by the board and who exhibits the written authorization to the auctioneer *or trading assistant* before making an inspection.

(c) Retention of records.—The written records shall be kept on file in the office of the auctioneer *or trading assistant* for a period of at least two years and, if the auctioneer *or trading assistant* is notified of a complaint against him, the records shall be maintained by the auctioneer *or trading assistant* until the complaint is finally resolved.

(d) *Receipts*.—Every auctioneer *or trading assistant* must provide a written receipt for all transactions. A receipt may be provided electronically. Receipts must be retained for at least two years.

Section 17. Contracts for conduct of **[sale] transaction**.

(a) General rule.—Prior to conducting **[an auction sale] a transaction**, an auctioneer *or trading assistant* shall enter into a written contract, in duplicate, with the owner or consignor of the property to be sold, containing the terms and conditions upon which the licensee *or registrant* agrees to conduct the **[auction] sale**. *The contract may be entered into electronically*. The contracts shall be kept on file in the office of the auctioneer *or trading assistant* and shall be open to inspection as provided in this act. It is unlawful for a person to advertise an auction or sale at auction *or a sale through an online Internet bidding platform* without including in the advertisement or notice of sale the name and license number of the auctioneer, auction house or auction company *or the registration number of the trading assistant* conducting the **[sale] transaction**.

(b) Penalty.—A person who violates subsection (a) commits a summary offense and shall, upon conviction, be sentenced to pay a fine not less than \$50.

Section 21. Escrow account.

Every auctioneer *and registrant* shall immediately deposit moneys, received from the sale of property, belonging to others in a separate custodial or trust fund account maintained by the auctioneer *or trading assistant* until the transaction involved is terminated, at which time the auctioneer *or trading assistant* shall account for the full amount received.

Section 26. Revocation or suspension of license *or registration*.

(a) Revocation or suspension of license *or registration* for committing crime.—Where, during the term of any license *or registration* issued by the board, the licensee *or registrant* is convicted in a court of competent jurisdiction in this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or

other like offense and a duly certified or exemplified copy of the record in the proceeding is filed with the board, the board shall revoke or suspend the license issued to the licensee *or registration issued to the registrant*.

(b) Suspension of license *or registration* pending trial of crime.—In the event any licensee *or registrant* is indicted in this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other offense or offenses and a certified copy of the indictment is filed with the board or other proper evidence is given to it, the board may, in its discretion, suspend the license issued to the licensee *or registration issued to the registrant* pending trial of the charges.

(c) Revocation of license of entity for violation by member or officer.—In the event of the revocation or suspension of the license issued to any member of a partnership or to any officer of an association or corporation, the license issued to the partnership, association or corporation shall be revoked by the board unless, within a time fixed by the board, the connection of the member of the partnership is severed and his interest in the partnership and his share in its activities brought to an end or the officer of the association or corporation is discharged and has no further participation in its activities.

Section 27. Issuance of new license *or registration* pending investigation and decision.

Pending an investigation or proceeding before the board affecting any licensee *or registrant* and pending final decision upon any appeal taken by a licensee *or registrant* from the ruling of the board, no new *registration may be issued or* license may be issued to a licensee or to a partnership of which he is a member or employee or to an association or corporation of which he is an officer or employee except for the period of the investigation or proceeding and subject to the action of the board.

Section 28. Issuance of new license *or registration* after revocation.

(a) General rule.—After the revocation of any license *or registration*, no new license *or registration* may be issued to the same licensee *or registrant* within a period of at least one year from the date of the revocation nor, except in the sole discretion of the board and subject to the conditions of this act, at any time thereafter.

(b) Criminal conduct.—No license *or registration* shall be issued by the board to any person known by it to have been, within five years, convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense, or to any copartnership of which any person is a member or to any association or corporation of which any person is an officer or employee or in which as a stockholder any person has or exercises a controlling interest either directly or indirectly.

Section 29. Penalties.

(a) Criminal penalties.—Any [individual, partnership, association or corporation] *person* who engages in or carries on the profession or acts in the capacity of an auctioneer, apprentice auctioneer, auction house [or],

auction company *or trading assistant* in this Commonwealth without a current license *or registration* or who employs any person without a current license as an apprentice auctioneer:

(1) For a first offense, commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$500 or to imprisonment not exceeding three months, or both.

(2) For a second or subsequent offense, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

(b) Civil penalty.—In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to \$1,000 on any person who engages in the practice of auctioneering without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) *Failure to register.*—*Any individual who fails to register under section 10.1 may be subject to a penalty of up to \$500 levied by the commissioner. The individual may request a hearing before the board, which shall be conducted in accordance with 2 Pa.C.S.*

Section 31. State Board of Auctioneer Examiners.

(a) Representation.—The State Board of Auctioneer Examiners shall consist of the Commissioner of Professional and Occupational Affairs, the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, two members appointed by the Governor with the advice and consent of the Senate, who shall be persons representing the public at large, **[and five] one member appointed by the Governor with the advice and consent of the Senate, who shall be a registered trading assistant, and four** members appointed by the Governor with the advice and consent of the Senate, who shall be licensed auctioneers, have served as licensed auctioneers for ten years or more and have conducted at least 50 auctions each year.

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Section 7. The board shall not promulgate regulations pertaining to section 10.1 of the act and registrations pursuant to section 10.1 of the act shall be accepted by the board upon the effective date of this section.

Section 8. This act shall take effect in 60 days.

APPROVED—The 8th day of October, A.D. 2008.

EDWARD G. RENDELL