



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1406

Introduced 2/21/2007, by Rep. Jim Sacia

#### SYNOPSIS AS INTRODUCED:

5 ILCS 80/4.20  
5 ILCS 80/4.25  
225 ILCS 407/10-27  
225 ILCS 407/10-30  
225 ILCS 407/25-5

Amends the Auction License Act. Provides that Internet auction storefronts are subject to the same laws and rules as auctioneers. Provides that a license that expires on September 30, 2009 shall instead expire on December 31, 2010, and thereafter a license shall expire every 2 years on December 31 of each even-numbered year. Provides that a renewal applicant for an auctioneer's (or associate's) license may complete continuing education courses in one day. Provides that a renewal applicant may receive credit in this State for similar continuing education courses in other states. Amends the Regulatory Sunset Act. Changes the scheduled repeal date on the Act to January 1, 2015 (from January 1, 2010).

LRB095 04356 RAS 24491 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Regulatory Sunset Act is amended by changing  
5 Sections 4.20 and 4.25 as follows:

6 (5 ILCS 80/4.20)

7 Sec. 4.20. Acts repealed on January 1, 2010. The following  
8 Acts are repealed on January 1, 2010:

9 ~~The Auction License Act.~~

10 The Illinois Architecture Practice Act of 1989.

11 The Illinois Landscape Architecture Act of 1989.

12 The Illinois Professional Land Surveyor Act of 1989.

13 The Land Sales Registration Act of 1999.

14 The Orthotics, Prosthetics, and Pedorthics Practice Act.

15 The Perfusionist Practice Act.

16 The Professional Engineering Practice Act of 1989.

17 The Real Estate License Act of 2000.

18 The Structural Engineering Practice Act of 1989.

19 (Source: P.A. 91-91, eff. 7-9-99; 91-92, eff. 7-9-99; 91-132,  
20 eff. 7-16-99; 91-133, eff. 7-16-99; 91-245, eff. 12-31-99;  
21 91-255, eff. 12-30-99; 91-338, eff. 12-30-99; 91-580, eff.  
22 1-1-00; 91-590, eff. 1-1-00; 91-603, eff. 1-1-00; 92-16, eff.  
23 6-28-01.)

1 (5 ILCS 80/4.25)

2 Sec. 4.25. Acts ~~Act~~ repealed on January 1, 2015. The  
3 following Acts are ~~Act is~~ repealed on January 1, 2015:

4 The Genetic Counselor Licensing Act.

5 The Auction License Act.

6 (Source: P.A. 93-1041, eff. 9-29-04.)

7 Section 10. The Auction License Act is amended by changing  
8 Sections 10-27, 10-30, and 25-5 as follows:

9 (225 ILCS 407/10-27)

10 (Section scheduled to be repealed on January 1, 2010)

11 Sec. 10-27. Registration of Internet Auction Listing  
12 Service; Internet auction storefront.

13 (a) For the purposes of this Section:

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

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

6           (3) "Internet auction storefront" means any entity  
7 with a physical location that serves as an agent for its  
8 customers in using the services of an Internet auction  
9 listing service.

10          (b) It is unlawful for any person, corporation, limited  
11 liability company, partnership, or other entity to provide an  
12 Internet auction listing service in the State of Illinois for  
13 compensation without being registered with the Office of Banks  
14 and Real Estate (OBRE) when:

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

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

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

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

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

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

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

26                 (4) that the registrant retains transactional

1 information consisting of at least seller identification,  
2 high bidder identification, and item sold for at least 2  
3 years from the close of a transaction, and has a mechanism  
4 to identify all transactions involving a particular seller  
5 or buyer;

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

8 (6) that the registrant adopts and reasonably  
9 implements a policy of suspending, in appropriate  
10 circumstances, the accounts of users who, based on the  
11 registrant's investigation, are proven to have engaged in a  
12 pattern of activity that appears to be deliberately  
13 designed to defraud consumers on the registrant's website;  
14 and

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

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

26 (1) intentionally makes a false or fraudulent material

1 representation or material misstatement or  
2 misrepresentation to OBRE in connection with its  
3 registration, including in the certification required  
4 under subsection (c);

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

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

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

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

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

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

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

15           (e) Registrations issued pursuant to this Section shall  
16 expire on September 30 of odd-numbered years. A registrant  
17 shall submit a renewal application to OBRE on forms provided by  
18 OBRE along with the required fee as established by rule.

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



1 injunctive relief in any circuit court to enjoin the person or  
2 entity from engaging in such practice.

3 (g) The provisions of Sections 20-25, 20-30, 20-35, 20-40,  
4 20-45, 20-50, 20-55, 20-60 and 20-75 of this Act shall apply to  
5 any actions of OBRE exercising its authority under subsection  
6 (d) as if a person required to register under this Section were  
7 a person holding or claiming to hold a license under this Act.

8 (g-5) An Internet auction storefront is subject to the same  
9 laws and rules as an auctioneer.

10 (h) OBRE shall have the authority to adopt such rules as  
11 may be necessary to implement or interpret the provisions of  
12 this Section.

13 (Source: P.A. 92-798, eff. 8-15-02.)

14 (225 ILCS 407/10-30)

15 (Section scheduled to be repealed on January 1, 2010)

16 Sec. 10-30. Expiration, renewal, and continuing education.

17 (a) A license issued under this Act shall expire every 2  
18 years beginning on September 30, 2001. However, a license  
19 issued under this Act that expires on September 30, 2009 shall  
20 instead expire on December 31, 2010, and thereafter a license  
21 issued under this Act shall expire every 2 years on December 31  
22 of each even-numbered year. The OBRE shall issue a renewal  
23 license without examination to an applicant upon submission of  
24 a completed renewal application and payment of the required  
25 fee.

1           (b) The OBRE shall develop a program for continuing  
2 education as established in Article 25 of this Act. No  
3 auctioneer or associate auctioneer shall receive a renewal  
4 license without completing 12 hours of approved continuing  
5 education course work during the pre-renewal period prior to  
6 the expiration date of the license from continuing education  
7 schools that are approved by the OBRE, as established in  
8 Article 25 of this Act. The applicant shall verify on the  
9 application that he or she:

10           (1) has complied with the continuing education  
11 requirements; or

12           (2) is exempt from the continuing education  
13 requirements because it is his or her first renewal and he  
14 or she was initially licensed as an auctioneer or associate  
15 auctioneer during the pre-renewal period prior to the  
16 expiration date.

17           (c) A renewal applicant may request a waiver of the  
18 continuing education requirements under subsection (d) of this  
19 Section, but shall not practice as an auctioneer or associate  
20 auctioneer until such waiver is granted and a renewal license  
21 is issued.

22           (d) The Commissioner, with the recommendation of the  
23 Advisory Board, may grant a renewal applicant a waiver from all  
24 or part of the continuing education requirements for the  
25 pre-renewal period if the applicant was not able to fulfill the  
26 requirements as a result of the following conditions:

1 (1) Service in the armed forces of the United States  
2 during a substantial part of the pre-renewal period.

3 (2) Service as an elected State or federal official.

4 (3) Service as a full-time employee of the OBRE.

5 (4) Other extreme circumstances as recommended by the  
6 Advisory Board.

7 (Source: P.A. 91-603, eff. 1-1-00.)

8 (225 ILCS 407/25-5)

9 (Section scheduled to be repealed on January 1, 2010)

10 Sec. 25-5. Continuing education.

11 (a) For each pre-renewal period, each auctioneer and  
12 associate auctioneer who makes application to renew his or her  
13 license must successfully complete auction continuing  
14 education courses approved by the Advisory Board and OBRE from  
15 a school approved by the Advisory Board and OBRE.

16 (b) Each renewal applicant shall successfully complete 12  
17 hours of continuing education, of which at least 6 hours shall  
18 be mandatory core subjects in the following categories:

19 (1) Illinois statutes and rules governing  
20 auctioneering;

21 (2) federal statutes and regulations governing  
22 auctioneering;

23 (3) auctioneering ethics;

24 (4) escrow and trust accounts;

25 (5) contracts; and

1           (6) other subject matter approved by the Board and  
2           established by rule.

3           (c) Each renewal applicant may satisfy the remaining 6  
4           hours of continuing education from the mandatory core subjects  
5           from the categories as provided in subsection (b) or  
6           successfully complete an additional 6 hours of continuing  
7           education in the following elective subject categories:

8           (1) agency;

9           (2) business courses related to auctioneering;

10          (3) real estate related courses;

11          (4) auction management;

12          (5) bid calling;

13          (6) public speaking;

14          (7) advertising;

15          (8) specialty auction courses; or

16          (9) other subject matter approved by the Board and  
17          established by rule.

18          (d) Every licensee shall personally take and pass an  
19          examination after each continuing education course, as  
20          provided by rule. For the purposes of this Section, 70% shall  
21          be deemed a passing score.

22          (e) A renewal applicant may complete the continuing  
23          education courses in one day.

24          (f) A renewal applicant may receive credit for continuing  
25          education courses in this State by completing similar  
26          continuing education courses in another state.

HB1406

- 12 -

LRB095 04356 RAS 24491 b

1 (Source: P.A. 91-603, eff. 1-1-00.)