

1 AN ACT relating to auctions.

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

4 Section 5. The Auction License Act is amended by  
5 changing Section 10-1 and adding Section 10-27 as follows:

6 (225 ILCS 407/10-1)

7 (Section scheduled to be repealed on January 1, 2010)

8 Sec. 10-1. Necessity of license; exemptions.

9 (a) It is unlawful for any person, corporation, limited  
10 liability company, partnership, or other entity to conduct an  
11 auction, provide an auction service, hold himself or herself  
12 out as an auctioneer, or advertise his or her services as an  
13 auctioneer in the State of Illinois without a license issued  
14 by OBRE under this Act, except at:

15 (1) an auction conducted solely by or for a  
16 not-for-profit organization for charitable purposes;

17 (2) an auction conducted by the owner of the  
18 property, real or personal;

19 (3) an auction for the sale or lease of real  
20 property conducted by a licensee under the Real Estate  
21 License Act, or its successor Acts, in accordance with  
22 the terms of that Act; and

23 (4) an auction conducted by a business registered  
24 as a market agency under the federal Packers and  
25 Stockyards Act (7 U.S.C. 181 et seq.) or under the  
26 Livestock Auction Market Law;

27 (5) an auction conducted by an agent, officer, or  
28 employee of a federal agency in the conduct of his or her  
29 official duties; and

30 (6) an auction conducted by an agent, officer, or  
31 employee of the State government or any political

1 subdivision thereof performing his or her official  
2 duties.

3 (b) Nothing in this Act shall be construed to apply to a  
4 new or used vehicle dealer or a vehicle auctioneer licensed  
5 by the Secretary of State of Illinois, or to any employee of  
6 the licensee, who is a resident of the State of Illinois,  
7 while the employee is acting in the regular scope of his or  
8 her employment for the licensee while conducting an auction  
9 that is not open to the public, provided that only new or  
10 used vehicle dealers, rebuilders, automotive parts recyclers,  
11 scrap processors, or out-of-state salvage vehicle buyers  
12 licensed by the Secretary of State or licensed by another  
13 jurisdiction may buy property at the auction, or to sales by  
14 or through the licensee.

15 (c) Nothing in this Act shall be construed to prohibit a  
16 person under the age of 18 from selling property under \$250  
17 in value while under the direct supervision of a licensed  
18 auctioneer.

19 (d) Nothing in this Act, except Section 10-27, shall be  
20 construed to apply to a person while providing an Internet  
21 auction listing service as defined in Section 10-27.

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

23 (225 ILCS 407/10-27 new)

24 Sec. 10-27. Registration of Internet Auction Listing  
25 Service.

26 (a) For the purposes of this Section:

27 (1) "Internet Auction Listing Service" means a  
28 website on the Internet, or other interactive computer  
29 service that is designed to allow or advertised as a  
30 means of allowing users to offer personal property or  
31 services for sale or lease to a prospective buyer or  
32 lessee through an on-line bid submission process using  
33 that website or interactive computer service and that

1       does not examine, set the price, or prepare the  
 2       description of the personal property or service to be  
 3       offered, or in any way utilize the services of a natural  
 4       person as an auctioneer.

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

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  
 14       Banks 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  
 18       of Illinois;

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

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

30       (c) Any person, corporation, limited liability company,  
 31       partnership, or other entity that provides an Internet  
 32       auction listing service in the State of Illinois for  
 33       compensation under any of the circumstances listed in  
 34       subsection (b) shall register with OBRE on forms provided by

1 OBRE accompanied by the required fee as provided by rule.  
2 Such registration shall include information as required by  
3 OBRE and established by rule as OBRE deems necessary to  
4 enable users of the Internet auction listing service in  
5 Illinois to identify the entity providing the service and to  
6 seek redress or further information from such entity. The fee  
7 shall be sufficient to cover the reasonable costs of OBRE in  
8 administering and enforcing the provisions of this Section.  
9 The registrant shall be required to certify:

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

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

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

18 (4) that the registrant retains transactional  
19 information consisting of at least seller identification,  
20 high bidder identification, and item sold for at least 2  
21 years from the close of a transaction, and has a  
22 mechanism to identify all transactions involving a  
23 particular seller or buyer;

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

26 (6) that the registrant adopts and reasonably  
27 implements a policy of suspending, in appropriate  
28 circumstances, the accounts of users who, based on the  
29 registrant's investigation, are proven to have engaged in  
30 a pattern of activity that appears to be deliberately  
31 designed to defraud consumers on the registrant's  
32 website; and

33 (7) that the registrant will comply with OBRE and  
34 law enforcement requests for stored data in its

1 possession, subject to the requirements of applicable  
2 law.

3 (d) OBRE may refuse to accept a registration which is  
4 incomplete or not accompanied by the required fee. OBRE may  
5 impose a civil penalty not to exceed \$10,000 upon any  
6 Internet auction listing service that intentionally fails to  
7 register as required by this Section, and may impose such  
8 penalty or revoke, suspend, or place on probation or  
9 administrative supervision the registration of any Internet  
10 auction listing service that:

11 (1) intentionally makes a false or fraudulent  
12 material representation or material misstatement or  
13 misrepresentation to OBRE in connection with its  
14 registration, including in the certification required  
15 under subsection (c);

16 (2) is convicted of any crime, an essential element  
17 of which is dishonesty, fraud, larceny, embezzlement, or  
18 obtaining money, property, or credit by false pretenses  
19 or by means of a confidence game; or is convicted in this  
20 or another state of a crime that is a felony under the  
21 laws of this State; or is convicted of a felony in a  
22 federal court;

23 (3) is adjudged to be a person under legal  
24 disability or subject to involuntary admission or to meet  
25 the standard for judicial admission as provided in the  
26 Mental Health and Developmental Disabilities Code;

27 (4) has been subject to discipline by another  
28 state, the District of Columbia, a territory of the  
29 United States, a foreign nation, a governmental agency,  
30 or any other entity authorized to impose discipline if at  
31 least one of the grounds for that discipline is the same  
32 as or equivalent to one of the grounds for discipline set  
33 forth in this Section or for failing to report to OBRE,  
34 within 30 days, any adverse final action taken against

1 the registrant by any other licensing or registering  
2 jurisdiction, government agency, law enforcement agency,  
3 or court, or liability for conduct that would constitute  
4 grounds for action as set forth in this Section;

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

9 (6) makes or files false records or reports in  
10 connection with activities subject to registration,  
11 including but not limited to false records or reports  
12 filed with State agencies;

13 (7) fails to provide information within 30 days in  
14 response to a written request made by the OBRE to a  
15 person designated in the registration for receipt of such  
16 requests; or

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

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

23 (f) Operating an Internet auction listing service under  
24 any of the circumstances listed in subsection (b) without  
25 being currently registered under this Section is declared to  
26 be adverse to the public welfare, to constitute a public  
27 nuisance, and to cause irreparable harm to the public  
28 welfare. The Commissioner of OBRE, the Attorney General of  
29 the State of Illinois, the State's Attorney of any county in  
30 the State, or any other person may maintain an action and  
31 apply for injunctive relief in any circuit court to enjoin  
32 the person or entity from engaging in such practice.

33 (g) The provisions of Sections 20-25, 20-30, 20-35,  
34 20-40, 20-45, 20-50, 20-55, 20-60 and 20-75 of this Act shall

1 apply to any actions of OBRE exercising its authority under  
2 subsection (d) as if a person required to register under this  
3 Section were a person holding or claiming to hold a license  
4 under this Act.

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

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.