

AN ACT

To amend sections 4707.01 and 4707.02 of the Revised Code to exclude persons who sell real or personal property by means of the Internet from having to obtain a license under the Auctioneers Law, to revise the definition of "auction mediation company," and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4707.01 and 4707.02 of the Revised Code be amended to read as follows:

Sec. 4707.01. As used in this chapter:

(A) "Auction" means a method of sale of real or personal property, goods, or chattels, at a predetermined date and time, by means of a verbal exchange, regular mail, telecommunications, the internet, an electronic transmission, or a physical gesture between an auctioneer or apprentice auctioneer and members of the audience or prospective purchasers, the exchanges and gestures consisting of a series of invitations for offers made by the auctioneer and offers by members of the audience or prospective purchasers, with the right to acceptance of offers with the auctioneer or apprentice auctioneer. "Auction" includes a sale of real or personal property, goods, or chattels in which there has been a solicitation or invitation by advertisement to the public for an advance in bidding using sealed bidding, provided that the bids are opened and there is a call for an advancement of the bids.

(B) "Auctioneer" means any person who engages, or who by advertising or otherwise holds the person out as being able to engage, in the calling for, recognition of, and the acceptance of, offers for the purchase of real or personal property, goods, or chattels at auction either directly or through the use of other licensed auctioneers or apprentice auctioneers.

(C) "Apprentice auctioneer" means any individual who is sponsored by an auctioneer to deal or engage in any activities mentioned in division (A) of this section.

(D) "Special auctioneer" means any person who currently is subject to

section 4707.071 of the Revised Code.

(E) "Absolute auction" means an auction of real or personal property to which all of the following apply:

- (1) The property is sold to the highest bidder without reserve.
- (2) The auction does not require a minimum bid.

(3) The auction does not require competing bids of any type by the seller or an agent of the seller.

(4) The seller of the property cannot withdraw the property from auction after the auction is opened and there is public solicitation or calling for bids.

(F) "Reserve auction" means an auction in which the seller or an agent of the seller reserves the right to establish a stated minimum bid, the right to reject or accept any or all bids, or the right to withdraw the real or personal property at any time prior to the completion of the auction by the auctioneer.

(G) "Auction mediation company" means a company that provides a forum through the internet for a person to sell the person's real or personal property ~~that was not originally acquired for the purpose of resale~~ via the submission of silent bids using a computer or other electronic device.

(H) "Public authority" means any board or commission of the state or any officer of such a board or commission, or any political subdivision of the state.

(I) "Estate auction" means the auction of real or personal property of a deceased person.

(J) "Absentee bidding" means a method by which a potential purchaser authorizes a proxy to place on behalf of the potential purchaser a written or oral bid to an auctioneer or auction firm or an agent of an auctioneer or auction firm.

(K) "Person" means an individual, sole proprietor, corporation, limited liability company, association, or partnership.

(L) "Auction firm" means a person who provides auction services.

(M) "Auction services" means arranging, managing, and sponsoring a personal property auction. "Auction services" includes the taking and advertising of personal property on consignment to be sold at auction by a licensed auctioneer.

(N) "Consignee" means a person or auction firm that takes personal property on consignment to be sold at auction by a licensed auctioneer.

(O) "Firm manager" means the individual designated by an auction firm who is responsible for ensuring that the auction firm complies with this chapter.

(P) "Sealed bidding" means a method of submitting a bid in writing by one or more persons following which the bids are opened at an advertised,

predetermined time and place, and, after a review of all the bids received, the real or personal property is awarded to the highest and most responsive bidder.

Sec. 4707.02. No person shall act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within this state without a license issued by the department of agriculture. No auction shall be conducted in this state except by an auctioneer licensed by the department.

The department shall not issue or renew a license if the applicant or licensee has been convicted of a felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal.

This section does not apply to:

(A) Sales at auction that either are required by law to be at auction, other than sales pursuant to a judicial order or decree, or that are conducted by or under the direction of a public authority;

(B) The owner of any real or personal property desiring to sell the property at auction, provided that the property was not acquired for the purpose of resale;

(C) An auction mediation company;

(D) An auction that is conducted in a course of study for auctioneers that is approved by the state auctioneers commission created under section 4707.03 of the Revised Code for purposes of student training and is supervised by a licensed auctioneer;

(E) An auction that is sponsored by a nonprofit or charitable organization that is registered in this state under Chapter 1702. or Chapter 1716. of the Revised Code, respectively, if the auction only involves the property of the members of the organization and the auction is part of a fair that is organized by an agricultural society under Chapter 1711. of the Revised Code or by the Ohio expositions commission under Chapter 991. of the Revised Code at which an auctioneer who is licensed under this chapter physically conducts the auction;

(F) A person licensed as a livestock dealer under Chapter 943. of the Revised Code who exclusively sells livestock and uses an auctioneer who is licensed under this chapter to conduct the auction;

(G) A person licensed as a motor vehicle auction owner under Chapter 4517. of the Revised Code who exclusively sells motor vehicles and who uses an auctioneer who is licensed under this chapter to conduct the auction;

(H) A person who sells real or personal property by means of the internet.

Sub. S. B. No. 99

4

SECTION 2. That existing sections 4707.01 and 4707.02 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act take effect on May 6, 2005.

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to clarify that the amendment of Chapter 4707. of the Revised Code by Sub. S.B. 209 of the 125th General Assembly, which is to take effect on May 6, 2005, was not intended to regulate a person who sells real or personal property by means of the Internet. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 99

6

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____