

**Summary Report to the Federal Trade Commission
Internet Work Shop
Auction Panel**

**Presented
by
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In the spring of 1999, during the 91st General Assembly of the State of Illinois, HB 1805 was introduced (Rep. Don Moffitt, et al.) to license and regulate the auction industry in Illinois for the first time. The bill was originally written to regulate the ‘conventional’ practice of auctioneering.

The bill proceeded out of the House with little or no debate and without substantive amendment. During the debate in the Senate Licensed Activities Committee, some concern was brought about whether or not it would apply to auctions conducted over the Internet. After the debate in Committee, the Senate sponsor (Sen. Todd Sieben) placed a floor amendment on the bill that included in the definition of “Auction” as a licensed activity, “the sale or lease of property via mail, telecommunications, or the Internet”. HB1805 was then passed by the Senate with concurrence of the House and was signed into law effective January 1, 2000 (225 ILCS 407).

As written, the bill did not contemplate the regulation of Internet auctions. It was written with the intention of licensing and regulating a ‘conventional’ auctioneer. A ‘conventional’ auctioneer normally has the opportunity to see and examine the property to develop advertising descriptions and lend advise to the seller and buyer as to the condition and quality of the property being sold. This scenario is not true with most Internet auction listing services. Most Internet auction listing services simply provide a platform or media for a person to describe and post their property or service for sale or lease. Although, under the provisions of the Illinois statute, it was clear that other activities and services provided by Internet auction listing services would require their licensure under the statute. In addition, it was clear that the legislative intent was to regulate this faction of the auction industry.

The Office of Banks and Real Estate (OBRE) is responsible for the administration and regulation of the auction profession pursuant to the legislation. OBRE began

discussions with the auction industry, the State Attorney General's office, and other affected groups concerning the implementation of this provision of the statute. Many issues were considered, including protection of consumers, jurisdiction, administrative, and business interests. During our discussions it appeared the most beneficial tool the statute could provide to combat fraud was a mechanism to identify and locate the users of Internet auction listing services when alleged fraudulent activity had occurred.

It became clear that the licensing and regulation provisions in the statute, as written, were at best cumbersome if they were to apply to Internet auction listing services. OBRE began serious negotiations with members of the Internet auction industry and other groups to amend the statute to better meet the goals established in our earlier meetings. Language was drafted and introduced in HB5803 in the spring of 2002. The bill moved through the legislature and was signed into law in August.

The amendment provides for a separate and distinct regulatory structure for Internet auction listing services. The amendment provides that if the buyer, seller or property offered on an Internet site operated by an Internet auction listing service is located in Illinois, then the Internet auction listing service must register with OBRE. The registration includes certifications by the Internet auction listing service that include, that the registrant:

- 1) is not an agent for users;
- 2) must gather and retain information on the users and transactions for a period of 2 years;
- 3) has a mechanism to receive complaints and inquiries from users;
- 4) adopts and implements a policy to suspend users who defraud other consumers; and
- 5) will provide information to OBRE and law enforcement on users who may be subject to investigation for fraud.

The amendment also provides grounds for discipline of a registrant for violating any provision in the statute. OBRE has the authority to revoke, suspend, place on probation or administrative supervision any registrant for a violation and may issue a civil penalty of \$10,000 per violation. OBRE is currently drafting an administrative rule to further clarify the provisions in the amendment.

OBRE believes this regulatory structure to be a common sense approach to a very complex issue. In addition, OBRE believes it best balances the interests of the consumer to combat fraud, without being overly cumbersome for business.