

# The Truth About Internet Auction Regulation in Pennsylvania

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In recent weeks, a significant amount of information has been appearing through email and numerous media outlets concerning the subject of regulating Internet auction activity in Pennsylvania. Some of this information has, at best, mischaracterized many of the facts surrounding this issue. At worst, these e-mails and media stories have provided misleading information to many uninformed Internet auction subscribers and also to many among the general public who may not have been following the progress of this controversy as it has evolved, particularly over the last six months.

In May of 2007, Senate Bill 908 (SB 908) was introduced in the Pennsylvania State Senate. SB 908 seeks to amend the Pennsylvania Auctioneer and Auction Licensing Act (The Licensing Act) by exempting "... a sale conducted through a trading platform based on the internet" from regulation under The Licensing Act. Simply stated this bill would enable any one to sell items via the electronic/Internet auction process without any regulation.

The introduction of this bill caught the immediate attention of the Pennsylvania Auctioneers Association (PAA) for two important reasons. First, passage of SB 908 would fail to provide for adequate consumer protection against unethical or unscrupulous practices by those engaging in electronic/Internet auction activity. Second, passage of such a bill would effectively disrupt the auction industry in Pennsylvania by having the traditional segment of the industry subject to regulation, while the electronic/Internet segment would be allowed to operate free of any regulation at all. This demonstrates a gross lack of fairness and common sense. The PAA seeks to create and provide for a level playing field where all auction professionals, whether they employ traditional or electronic methods, may compete fairly in the market place for their portion of market share. The consumers will then determine who provides the best service for the best value as they should in a free market environment.

Contrary to language contained in a recent Associated Press article entitled, "eBay Traders Warned They Need a State License," Pennsylvania's auctioneers are not trying to protect themselves because we fear competition or are trying to limit competition through the law. Nor, as was written elsewhere, are auctioneers relying on an antiquated license law for protection. In fact, the PAA has taken an active role over the last six months in leading the effort to amend The Licensing Act to allow for the electronic/Internet auction professionals to become licensed fairly under the Act.

The result of this effort to date has been the introduction of House Bill 1899 (HB 1899) by Representative Michael Sturla of Lancaster County on October 24, 2007. HB 1899 would effectively create a new entity with a new definition placed under the special license section that already exists in The Licensing Act. This new entity would be called An Electronic Auction Broker. The Electronic Auction Broker requirement would only apply to those persons who are engaged in the business of conducting Internet auctions and acting as a third party in a transaction between buyer and seller facilitating the sale of merchandise and accepting a fee for services rendered. This provision would not apply to those individuals buying and selling merchandise for their own account.

Further, the Electronic Auction Broker would not be licensed as a traditional auctioneer and would not, therefore, be subject to educational or apprenticeship requirements that apply to the traditional auctioneer. The PAA does not believe that trading assistants or drop-off store operators are auctioneers in the traditional sense, nor should they be licensed as auctioneers in the traditional sense. However, we do strongly believe that these persons are engaged in auction related activity when they place merchandise for sale via the Internet where the competitive bidding process is used to achieve the highest possible price and a transaction is consummated. They are conducting auction business but not as traditional auctioneers.

By including this new license under the existing Licensing Act, we are not creating new layers of bureaucracy to accomplish this objective of a limited license. In addition, total licensing and bonding fees for the Electronic Auction Broker would probably amount to \$150.00/175.00 per year - hardly onerous or cumbersome regulation as our opposition has charged.

The PAA encourages all interested parties to review House Bill 1899. A thoughtful reading of this bill will promote a thorough understanding of what we think is the right way to approach resolving this issue. The PAA, the Legislature and the Department of State all recognize that the current Licensing Act, last amended in 1983, did not anticipate the changes Internet technology has brought to the auction industry since that time. We seek to correct this problem through a fair and reasonable approach so that everyone on both sides of this issue can go forward and conduct their respective businesses.

It should be noted that certain online auction interests, who represent our opposition in this debate, have been invited to participate in being a part of the solution to this problem. Although we have not achieved a negotiated agreement with them yet, neither have we ignored their concerns or attempted to regulate more than we believe is necessary to resolve the issue. The public has a right to know this information so they might make an informed decision concerning this issue now that they have been provided with the whole story.

It should also be noted that the State Board of Auctioneer Examiners and, by extension, the Bureau of Professional and Occupational Affairs and the Pennsylvania Department of State, is attempting to fulfill their respective responsibilities to the public with the license law as it is currently written. The State Board of Auctioneer Examiners was unfairly criticized in the AP article referred to earlier and is merely responding to complaints filed with them concerning unlicensed activity by electronic/internet auction professionals. The State Board of Auctioneer Examiners can only interpret the law with language that exists within The Licensing Act as it is currently written. They do not have the power to rewrite the law; this procedure can only happen through the legislature. That is why the PAA has been actively working with the legislature to facilitate that process. We believe our approach has been consistent, focused, reasonable, and helpful in that regard.

Lastly, the importance of consumer protection in this debate should not be overlooked. Our opponents thus far have publicly said little regarding consumer protection. They argue that they can regulate themselves through an internal rating process. The truth is people have already devised ways to circumvent this process. Moreover, common sense and rational thinking indicate that no one can fairly or objectively regulate himself or herself.

In addition, ample national statistics exist to support the position that Internet auction fraud has been a serious and growing problem in recent years. Pennsylvania is not immune from this

phenomenon. Having the words auction and fraud associated in any context cannot be positive for the auction industry, whether traditional or electronic, and only serves to lower consumer confidence in the process. In the end, no one on either side of this debate over limited regulation can benefit from this outcome. Reasonable oversight and accountability are both appropriate and necessary.

To learn more about the PAA's position on this issue, interested parties should contact Jeanie Crowl at the PAA office at [info@paauctioneers.org](mailto:info@paauctioneers.org); PAA President Dan Trace at [dan@traceauctions.com](mailto:dan@traceauctions.com); or PAA Legislative Committee Chairman Robert H. Clinton at [rhclintonauction@hotmail.com](mailto:rhclintonauction@hotmail.com).