S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

March 27, 2009

Introduced by Sens. FLANAGAN, HANNON, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to auction requirements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature declares that the following provisions of law are in addition to other provisions of law and regulations applicable to auctions.

S 2. The general business law is amended by adding a new section 29 to read as follows:

S 29. AUCTION REQUIREMENTS. 1. THE AUCTIONEER WILL BE HELD RESPONSIBLE FOR THE TRUTH OF ANY STATEMENT CONTAINED IN ANY CATALOGUE, ADVERTISEMENT, ANNOUNCEMENT, PRESS RELEASE OR OTHER PUBLIC STATEMENT MADE BY THE AUCTIONEER RELATING TO ANY AUCTION.

2. A. NO PERSONAL PROPERTY MAY BE AUCTIONED EXCEPT PURSUANT TO A WRITTEN CONTRACT BETWEEN THE CONSIGNOR OR HIS OR HER AGENT OR AUTHORIZED REPRESENTATIVE AND THE AUCTIONEER, UNLESS AUCTIONED PURSUANT TO AN ORDER OF A COURT OF COMPETENT JURISDICTION.

B. EVERY CONTRACT REQUIRED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION MUST CONTAIN THE FOLLOWING PROVISIONS:

(I) ALL FEES, COMMISSIONS AND CHARGES TO BE PAID BY THE CONSIGNOR TO THE AUCTIONEER OR HIS OR HER AGENTS, PRINCIPALS, EMPLOYEES, EMPLOYERS OR ASSIGNS SHALL:

(1) TO THE EXTENT PRACTICABLE, BE ITEMIZED AND SPECIFIED AS TO AMOUNT (WHICH MAY BE STATED AS A PERCENTAGE OF THE RESERVE PRICE OR ANY FINAL BID), AND

(2) IF SUCH ITEMIZATION AND SPECIFICATION AS TO AMOUNT IS NOT PRACTICABLE, BE DESCRIBED WITH SUFFICIENT PARTICULARITY TO INFORM THE CONSIG-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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NOR OF THE NATURE OF THE SERVICES FOR WHICH SUCH FEES, COMMISSIONS AND CHARGES WILL BE IMPOSED.

(II) THAT AS OF THE DATE OF THE AUCTION THE CONSIGNOR WARRANTS THAT HE OR SHE HAS COMPLETE AND LAWFUL RIGHT, TITLE AND INTEREST IN THE PROPERTY AUCTIONED, AND THAT THE CONSIGNOR SHALL INDEMNIFY THE AUCTIONEER, HIS OR HER AGENTS, PRINCIPALS, EMPLOYEES, EMPLOYERS OR ASSIGNS IN THE EVENT OF ANY DEFECT IN TITLE, AND THAT AN INTENDED BENEFICIARY OF THIS WARRANTY IS THE ULTIMATE PURCHASER AT AUCTION.

C. WHERE ARTICLES ARE REFERRED TO BY CATALOGUE OR ADVERTISEMENT AS HAVING BEEN OBTAINED FROM ANY SPECIFIC PERSON, PLACE OR SOURCE, SUCH ARTICLES MUST BE SEPARATELY ENUMERATED AND IDENTIFIED.

D. IF AN AUCTIONEER OR AUCTION HOUSE HAS ANY INTEREST, DIRECT OR INDIRECT, IN AN ARTICLE, INCLUDING A GUARANTEED MINIMUM, OTHER THAN THE SELLING COMMISSION, THE FACT SUCH INTEREST EXISTS MUST BE DISCLOSED IN CONNECTION WITH ANY DESCRIPTION OF THE ARTICLE OR ARTICLES IN THE CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN RELATION TO THE SALE. SUCH NOTICE MAY BE DENOTED BY A PROMINENT SYMBOL OR LETTER WHICH WILL REFER THE READER TO AN EXPLANATION OF THE NATURE OF THE INTEREST THE SYMBOL OR LETTER DENOTES. IN ADDITION, PRIOR TO THE COMMENCEMENT OF THE AUCTION, THE AUCTIONEER SHALL ORALLY ANNOUNCE THAT THOSE LOTS IN WHICH THE AUCTIONEER HAS AN INTEREST COVERED BY THIS SUBDIVISION HAVE BEEN DESIGNATED IN THE AUCTION CATALOGUE AND THE SYMBOL USED TO DENOTE SUCH INTEREST.

E. WHERE A CONSIGNOR IS TO RECEIVE A REBATE COMMISSION IN WHOLE OR IN PART, OR WHERE HE OR SHE WILL BE PERMITTED TO BID UPON AND TO BUY BACK HIS OR HER OWN ARTICLE AT THE SALE, DISCLOSURE OF SUCH A CONDITION MUST BE MADE IN CONNECTION WITH ANY DESCRIPTION OF THE ITEM OR ITEMS SO AFFECTED IN THE CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN RELATION TO THE SALE. THE EXISTENCE OF SUCH A CONDITION MAY BE DENOTED BY A SYMBOL OR LETTER WHICH WILL REFER THE READER TO AN EXPLANATION OF THE NATURE OF THE INTEREST THE SYMBOL OR LETTER DENOTES.

F. (I) IF THE CONSIGNOR HAS FIXED A PRICE BELOW WHICH AN ARTICLE WILL NOT BE SOLD, THE "RESERVE PRICE", THE FACT THAT THE LOT IS BEING SOLD SUBJECT TO RESERVE MUST BE DISCLOSED IN CONNECTION WITH THE DESCRIPTION OF ANY LOT SO AFFECTED IN THE CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN RELATION TO THE SALE. THE EXISTENCE OF A RESERVE PRICE MAY BE DENOTED BY A SYMBOL OR LETTER WHICH WILL REFER THE READER TO AN EXPLANATION OF RESERVE PRICE. FOR THE PURPOSE OF PARAGRAPHS (D),(E) AND (F) OF THIS SUBDIVISION, ADVERTISEMENTS IN NEWSPAPERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL. WHERE NO PRINTED MATERIAL IS PROVIDED IN CONNECTION WITH THE AUCTION AN AUCTIONEER SHALL HAVE AVAILABLE DURING ANY ADVERTISED INSPECTION PERIOD INFORMATION AS TO WHETHER A PARTICULAR LOT IS TO BE SOLD SUBJECT TO RESERVE AND SHALL ANNOUNCE BEFORE HE OR SHE COMMENCES THE AUCTION THAT SUCH INFORMATION IS AVAILABLE UPON REQUEST.

(II) WHEN A LOT IS NOT SUBJECT TO A RESERVE PRICE, THE AUCTIONEER SHALL NOT INDICATE IN ANY MANNER THAT THE LOT IS SUBJECT TO A RESERVE PRICE.

G. IN THE EVENT AN AUCTIONEER EXTENDS A LOAN TO A PURCHASER, THE AUCTIONEER SHALL DISCLOSE IN A GENERAL ANNOUNCEMENT AT THE COMMENCEMENT OF THE AUCTION THAT BIDDERS MAY BE PARTICIPATING IN THE SALE WHO HAVE BEEN OFFERED A LOAN BY THE AUCTIONEER. IN ADDITION, THIS DISCLOSURE MUST ALSO BE MADE ON SIGNS PROMINENTLY DISPLAYED IN THE AUCTION ROOM AND AT THE ENTRANCE THERETO. SUCH SIGNS SHALL INCLUDE THE FOLLOWING DISCLOSURE, OR CONVEY SUBSTANTIALLY THE SAME MESSAGE:

"BIDDERS MAY BE PARTICIPATING IN THE SALE WHO HAVE BEEN OFFERED A LOAN BY THE AUCTIONEER."

H. THE AUCTIONEER SHALL:

(I) PROVIDE INFORMATION AS TO THE NUMBER OF JEWELS, APPROXIMATE NUMBER OF CARATS, NUMBER OF POINTS (DIAMOND), PRINCIPAL METAL CONTENT, AND MANUFACTURER'S NAME, IF KNOWN, FOR ALL ARTICLES OF JEWELRY, INCLUDING WATCHES. THE INFORMATION REQUIRED BY THIS PARAGRAPH SHALL BE PROVIDED EITHER IN THE CATALOGUE DESCRIPTIONS OF SUCH ITEMS OR BY ATTACHING TO EACH SUCH ITEM A TAG OR MARKING CONTAINING THE INFORMATION.

(II) ISSUE OR CAUSE TO BE ISSUED TO EACH PURCHASER AN INVOICE WHICH SHALL CONTAIN ALL THE FOLLOWING INFORMATION:

(1) THE AUCTIONEER'S NAME, BUSINESS ADDRESS AND LICENSE NUMBER;

(2) THE NAME AND ADDRESS OF THE AUCTIONEER'S EMPLOYER OR PRINCIPAL;

(3) THE DATE OF SALE;

(4) THE LOT NUMBER, DESCRIPTION, QUANTITY AND SELLING PRICE OF EACH LOT;

(5) THE TOTAL AMOUNT OF PURCHASE WITH A SEPARATE STATEMENT OF SALES TAX;

(6) ALL DEPOSITS MADE AGAINST THE PURCHASE PRICE.

(III) ADVERTISE EACH AUCTION SALE AT LEAST ONCE IN THE SEVEN DAY PERIOD IMMEDIATELY PRECEDING THE AUCTION.

(IV) NOTIFY THE PERSON WHOSE PROPERTY IS BEING AUCTIONED (AND ANY OTHER PERSON ENTITLED TO BE NOTIFIED ACCORDING TO LAW) AS TO THE DATE, PLACE AND TIME OF SALE.

(V) PERMIT (PRIOR TO THE START OF THE AUCTION) PROSPECTIVE PURCHASERS TO INSPECT EACH AND EVERY ARTICLE TO BE OFFERED FOR SALE.

(VI) FURNISH TO ANY BUYER, CONSIGNOR OR OWNER OF AN ARTICLE, UPON REQUEST, INFORMATION AS TO THE WHEREABOUTS OF THAT ARTICLE THAT COMES INTO HIS OR HER POSSESSION OR THAT IS SOLD OR OFFERED FOR SALE BY HIM OR HER.

(VII) SEND CHECKS FOR THE NET AMOUNT RECEIVED ON ALL SALES TO PERSONS ENTITLED TO THE PROCEEDS THEREOF WITHIN FOURTEEN DAYS OF DATE OF SALE (EXCEPT AS OTHERWISE AGREED IN WRITING OR OTHERWISE PROVIDED BY LAW) TOGETHER WITH A COMPLETE DETAILED STATEMENT INCLUDING LOT NUMBER, QUANTITY, DESCRIPTION AND SELLING PRICE OF EACH LOT; TOTAL AMOUNT RECEIVED ON SALE; AND DISBURSEMENTS LISTING COMMISSION, COST OF ADVERTISEMENT, LABOR, CHARGES AND ALLOWANCES, AND SUNDRY EXPENSES.

(VIII) WHEN AN AUCTIONEER HAS A NUMBER OF THE SAME KIND OF ARTICLES TO BE SOLD AND INTENDS TO DISPOSE OF EACH OF THEM AT THE AMOUNT AT WHICH THE FIRST IS SOLD, HE OR SHE SHALL MAKE AN ANNOUNCEMENT TO THAT EFFECT PRIOR TO OPENING THE SALE OF THE FIRST ARTICLE.

I. IF AN AUCTIONEER MAKES LOANS OR ADVANCES MONEY TO CONSIGNORS OR PROSPECTIVE PURCHASERS, THIS FACT MUST BE CONSPICUOUSLY DISCLOSED IN THE AUCTIONEER'S CATALOGUE OR PRINTED MATERIAL. IF THE AUCTIONEER DOES NOT PROVIDE ANY SUCH PRINTED MATERIAL, HE OR SHE SHALL MAKE THE DISCLOSURE, EITHER BY CONSPICUOUSLY POSTING A SIGN, OR IN ANOTHER SIMILARLY CONSPICUOUS MANNER, AT THE TIME OF ANY ADVERTISED INSPECTION PERIODS PRIOR TO THE AUCTIONS. FOR THE PURPOSE OF THIS PARAGRAPH ADVERTISEMENTS IN NEWSPAPERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL.

J. EXCEPT TO IMPLEMENT A RESERVE PRICE, AND SUBJECT THE REQUIREMENTS OF PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION, NO AUCTIONEER, HIS OR HER CONSIGNOR, EMPLOYEE, EMPLOYER, ASSIGNEE OR AGENT FOR ANY OF THEM MAY BID FOR HIS OR HER OWN ACCOUNT AT ANY AUCTION IF ANY OF THEM SHALL HAVE ACCESS TO INFORMATION NOT OTHERWISE AVAILABLE TO THE PUBLIC REGARDING RESERVES, VALUE OR OTHER MATERIAL FACTS RELATING TO THE ARTICLES WHICH ARE THE SUBJECT OF THE AUCTION, UNLESS THEIR STATUS AS A PERSON

WITH INSIDE INFORMATION AND INTENDED PARTICIPATION IS DISCLOSED IN THE AUCTIONEER'S CATALOGUE AND ANY PRINTED MATERIAL AND ON SIGNS POSTED AT THE AUCTION.

K. WHEREVER AN ESTIMATE OR ESTIMATED VALUE OF AN ITEM OR LOT IS PUBLISHED IN A CATALOGUE OR ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN RELATION TO AN AUCTION SALE, A GENERAL DESCRIPTION OF THE ESTIMATE AND ITS MEANING AND FUNCTION MUST BE INCLUDED IN SUCH PRINTED MATERIAL. FOR THE PURPOSE OF THIS PARAGRAPH, ADVERTISEMENTS IN NEWSPAPERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL. WHERE NO PRINTED MATERIAL IS PROVIDED, AND AN ESTIMATE OR ESTIMATED VALUE IS ANNOUNCED OR DISSEMINATED IN ANY MANNER, A GENERAL DESCRIPTION OF THE ESTIMATE AND ITS MEANING AND FUNCTION MUST BE AVAILABLE FOR DISTRIBUTION AND ITS AVAILABILITY MUST BE ANNOUNCED AT THE COMMENCEMENT OF THE AUCTION.

L. IN ANY ADVERTISEMENT INDICATING AN AUCTION SALE DUE TO A BUSINESS' LOSS OF LEASE OR LIQUIDATION, THE AUCTIONEER MUST INCLUDE THE NAME OF THE CONSIGNOR OR BUSINESS AUTHORIZING THE AUCTION. IN ANY SALE ADVERTISED AS PURSUANT TO A SECURITY AGREEMENT, THE NAME OF THE DEBTOR SHALL BE INDICATED CONSPICUOUSLY.

3. A. IF THE RESERVE PRICE IS NOT BID, THE AUCTIONEER MAY WITHDRAW A LOT FROM SALE. AT THE TIME OF SUCH WITHDRAWAL, AND BEFORE BIDDING ON ANOTHER LOT BEGINS, THE AUCTIONEER SHALL ANNOUNCE THAT THE WITHDRAWN LOT HAS BEEN "PASSED", "WITHDRAWN", "RETURNED TO OWNER" OR "BOUGHT-IN".

B. BEFORE BIDDING ON ANY LOT HAS REACHED ITS RESERVE PRICE NO AUCTIONEER MAY MAKE OR PLACE CONSECUTIVE OR SUCCESSIVE BIDS, OR PLACE BIDS IN RESPONSE TO BIDS FROM OTHERS, ON BEHALF OF THE CONSIGNOR, UNLESS THE FACT THAT THE AUCTIONEER WILL OR MAY BID IN SUCH A MANNER IS CLEARLY AND CONSPICUOUSLY DISCLOSED IN ANY CATALOGUE AND ANY OTHER PRINTED MATERIAL PUBLISHED OR DISTRIBUTED IN CONNECTION WITH THE SALE. FOR THE PURPOSES OF THIS PARAGRAPH ADVERTISEMENTS IN NEWSPAPERS OR OTHER PERIODICALS SHALL NOT CONSTITUTE PRINTED MATERIAL. THIS DISCLOSURE MUST ALSO BE MADE ON SIGNS PROMINENTLY DISPLAYED IN THE AUCTION ROOM AND AT THE ENTRANCE THERETO, AND MUST BE ANNOUNCED BY THE AUCTIONEER IMMEDIATELY PRIOR TO THE COMMENCEMENT OF ANY AUCTION.

THE SIGN REQUIRED BY THIS PARAGRAPH MUST BE AT LEAST TWELVE INCHES BY EIGHTEEN INCHES IN DIMENSION WITH LETTERS AT LEAST ONE INCH HIGH, AND MUST READ AS FOLLOWS, OR CONVEY A SUBSTANTIALLY SIMILAR DISCLOSURE:

THE AUCTIONEER MAY OPEN BIDDING ON ANY LOT BY PLACING A BID ON BEHALF OF THE SELLER. THE AUCTIONEER MAY FURTHER BID ON BEHALF OF THE SELLER, UP TO THE AMOUNT OF THE RESERVE, BY PLACING SUCCESSIVE OR CONSECUTIVE BIDS FOR A LOT, OR BY PLACING BIDS IN RESPONSE TO OTHER BIDDERS.

C. AFTER BIDDING HAS REACHED THE RESERVE PRICE OF A LOT:

(I) THE AUCTIONEER MAY NOT BID ON BEHALF OF THE CONSIGNOR OR THE AUCTION HOUSE; AND

(II) THE AUCTIONEER MAY ONLY ACCEPT BIDS FROM PERSONS OTHER THAN THE CONSIGNOR OR THE AUCTION HOUSE EXCEPT ABSENTEE TELEPHONE, ORDER OR OTHER AGENT'S BIDS;

(III) THIS PARAGRAPH SHALL NOT APPLY TO AUCTION SALES CONDUCTED PURSUANT TO AN ORDER OF A COURT OF COMPETENT JURISDICTION, INCLUDING AN ORDER OF A BANKRUPTCY JUDGE OR TRUSTEE, OR A SALE OF SECURED PROPERTY PURSUANT TO THE UNIFORM COMMERCIAL CODE, OR THE SALE OF PROPERTY WHICH IS SUBJECT TO A LIEN OR ASSIGNMENT PURSUANT TO THE LAWS OF THE STATE OF NEW YORK.

D. IN NO EVENT SHALL THE RESERVE PRICE FOR ANY LOT EXCEED THE MINIMUM ESTIMATED VALUE OF THE LOT AS PUBLISHED IN ANY CATALOGUE OR OTHER PRINTED MATERIAL DISTRIBUTED BY THE AUCTIONEER.

4. A. AN AUCTIONEER MAY NOT DISCLAIM WARRANTY OF TITLE OF ANY ITEM SOLD AT AUCTION. THE AUCTIONEER SHALL REIMBURSE ANY PURCHASER IN AN AMOUNT EQUAL TO THE SUCCESSFUL BID AT AUCTION PLUS ANY BUYER'S COMMISSION PAID IN THE EVENT IT IS DETERMINED THAT THE PURCHASER HAS NOT ACQUIRED TRANSFERABLE TITLE TO THE ITEM.

B. AT THE AUCTION SALE PREMISES ONLY EXTERIOR SIGNS MAY BE DISPLAYED ADVERTISING THE AUCTION SALE BUT THE SAME SHALL NOT BE EXCESSIVE IN SIZE.

C. AN AUCTIONEER MAY NOT:

(I) OFFER MORE THAN ONE ARTICLE FOR SALE AT ANY ONE TIME UNLESS THE COMBINING OF ARTICLES OR LOTS IS SO INDICATED PRIOR TO THE INITIAL BID.

(II) REPRESENT AN ARTICLE TO BE GUARANTEED BY THE MANUFACTURER OR THE OWNER UNLESS A MANUFACTURER'S OR OWNER'S GUARANTEE ACCOMPANIES THE ARTICLE.

(III) OFFER AN ARTICLE CONTAINED IN A CARTON, PACKAGE OR OTHER CONTAINER COMMONLY KNOWN AS A BLIND ARTICLE UNLESS PRIOR TO THE OFFER IT IS ANNOUNCED THAT THE HIGHEST BIDDER MAY REJECT THE ARTICLE IF NOT SATISFACTORY TO HIM OR HER. THIS PROVISION DOES NOT REFER TO AN AUCTION OF ARTICLES IN BULK WHERE A SAMPLE IS DISPLAYED AND BALANCE OF ARTICLES ARE REPRESENTED TO CONFORM TO THE SAMPLE.

(IV) ACCEPT AS PAYMENT OR EXCHANGE ANY ARTICLE PREVIOUSLY KNOCKED DOWN OR SOLD TO A SUCCESSFUL BIDDER. THE ARTICLE KNOCKED DOWN OR SOLD MUST BE DELIVERED TO THE BIDDER OR, IF THE AUCTIONEER IS WILLING AND AT THE BIDDER'S ELECTION, THE PURCHASE PRICE REFUNDED IN FULL. NO OTHER ARTICLE MAY BE OFFERED TO SAID BIDDER AS A SUBSTITUTE OR REPLACEMENT. SUCH REFUND SHALL TAKE PLACE WITHIN A REASONABLE TIME OR MAY BE APPLIED AS PART PAYMENT OR PAYMENT FOR ANY OTHER ARTICLE PURCHASED AT AUCTION BY THE SAME BIDDER.

5. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY THE COUNTY OFFICER CHARGED WITH ENFORCEMENT OF CONSUMER PROTECTION WITHIN SUCH COUNTY, EXCEPT THAT IN THE CITY OF NEW YORK, BY THE COMMISSIONER OF CONSUMER AFFAIRS OF SUCH CITY.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.